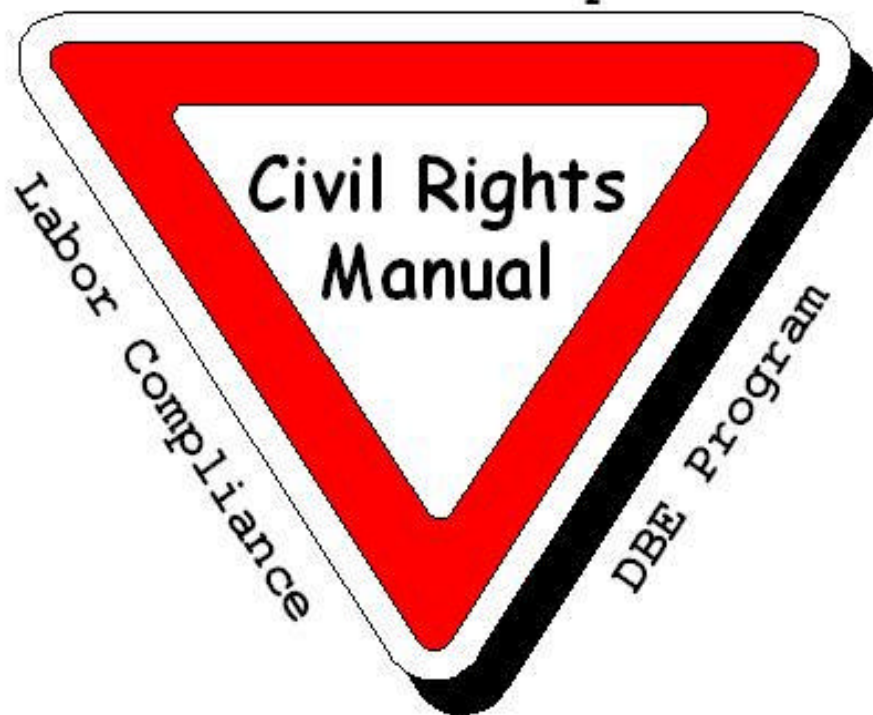




EEO Contract Compliance



Montana Department of Transportation
Civil Rights Bureau



**The Honorable Brian Schweitzer
Governor, State of Montana**

**Jim Lynch, Director
Montana Department of Transportation**

**Paula Stoll, Administrator
Human Resources Division**

**Civil Rights Bureau:
Vicky A. Koch, Chief**

Jim Phillips, EEO Specialist

Bill Anderson, EEO Specialist

Alice Flesch, ADA Coordinator

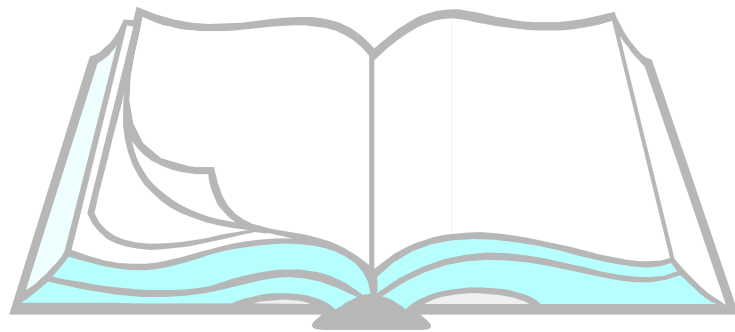
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DEFINITIONS





EEO/LABOR DEFINITIONS

- Apprentice
- (1) a person employed and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by that Bureau; or (2) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in a program but who has been certified by the Bureau.
- Basic Rate
- The "basic rate" cannot be less than the greater of (1) the contract minimum rate, or (2) the minimum rate under the Fair Labor Standards Act, or (3) the straight-time hourly rate actually being paid. The basic rate does not include fringe benefit payments made in cash or otherwise.
- Building or Work
- These terms generally include construction activity as distinguished from manufacturing, furnishing of materials or servicing and maintenance work. The terms include, without limitation, buildings, structures and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, scaffolding, drilling, blasting, excavating, clearing and landscaping.
- CRB
- Civil Rights Bureau
- Compliance Review
- An evaluation and determination of a non-exempt direct federal or federal-aid contractor's or subcontractor's compliance with equal opportunity requirements based on:

Work Force Project - employees at the physical location of the construction activity.

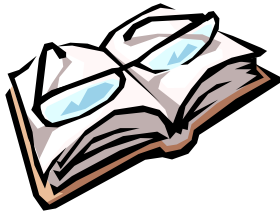
Work Force Area - employees at all federal-aid, federal and non-federal projects in a specific geographical area as determined by the Federal Aid Policy Guide Sec.710.404.

Work Force Home Office - employees at the physical location of the corporate, company or other ownership headquarters or regional managerial offices, including "white collar" personnel (managers, professionals, technicians and clerical) and any maintenance or service personnel connected thereto.

Construction

- Defined in 41 (Code of Federal Regulations) CFR Part 60-1.3(e) and 23 (United States Code) U.S.C. 101(a). References in both definitions to expenses or functions incidental to construction shall include preliminary engineering work in project development or engineering services performed by or for a (State Highway Agency) SHA.

Contract



- The term "contract" means any prime contract which is subject wholly or in part to the labor standards provision of any of the acts listed in ' 5.1, 29 CFR, and any subcontract of any tier thereunder, let under the prime contract. A state or local government is not regarded as a contractor under statutes providing loans, grants or other federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of federal-aid must pay these employees according to Davis-Bacon labor standards.

Contractor

- Any person, corporation, partnership or unincorporated association that holds an FHWA direct or federally assisted construction contract or subcontract regardless of tier.

Copeland "Anti-Kickback" Act

- The Copeland "Anti-Kickback" Act makes it a criminal offense for any person to make unauthorized deductions or to exact rebates from the wages paid to any person employed by a contractor or subcontractor engaged in the construction, prosecution, completion or repair of any public work or work financed in full or in part by loans or grants from a

federal agency. The U.S. Secretary of Labor is authorized to promulgate regulations with respect to this Act. Except as is provided in the regulations issued by the Secretary of Labor, no deductions of any kind are authorized from the wages of employees.

Core Crew

- Core crew is defined as a regular, permanent employee who is either in a supervisory, other key position, or one in which the employer would likely risk financial damage or loss if the position was filled by a person who had not previously worked for that firm. A regular, permanent employee is one who was on the contractor's payroll during the previous construction season, or, is presently an owner of the firm, in contrast to an employee hired on a project-by-project basis.

Corrective Action Plan -

- A contractor's unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate, to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment.)

Davis-Bacon Act

- The Davis-Bacon Act provides, in general, that contracts in excess of \$2,000 to which the United States is a party, for the construction, alteration and/or repair, including painting and decorating, of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions and termination of the contract for failure to pay the required wages. The Act contains provisions for debarment by the Comptroller General of the United States of contractors who are found to have disregarded their obligations to employees and subcontractors and provides for the direct payment to employees of wages due by the Comptroller General. If funds withheld from the contractor are insufficient for full reimbursement of the amounts due laborers or mechanics, the Act creates a right of action and/or intervention by

laborers and mechanics against the contractor and his sureties, unless otherwise specified.

Days	- Calendar days.
Deduction	- A deduction is any sum of money which the contractor, or someone else in the chain of payment responsibility, withholds from the wages due an employee.
Director	- The Director of the Montana Department of Transportation.
Discrimination	- A distinction in treatment based on race, color, creed, religion, disability, marital status, political belief, age, sex or national origin.
Equal Employment Opportunity	- The absence of partiality or distinction in employment treatment, so that the rights of all persons to work and advance on the basis of merit, ability and potential is maintained.
Estimate Section	- A branch of MDT Construction Bureau that verifies and processes contractor payments.
FHWA	- Federal Highway Administration, United States Department of Transportation
EPM	- Engineering Project Manager
Good Faith Effort	- Affirmative action measures designed to implement the established objectives of an Affirmative Action Plan or DBE Program (see DBE definitions).
Immediate Labor Area	- The immediate labor area describes the geographic area from which employees and/or applicants could reasonably commute to the project site. The immediate labor area should also be defined so as to include a reasonable recruiting area. Local or county(ies) would be considered a reasonable recruiting area.
Laborer or Mechanic	- The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers and, in the case of contracts subject

to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive or clerical, rather than manual. Persons employed in a bona fide executive, administrative or professional capacity as defined in Part 541 of this regulation (CFR 29, Subtitle A) are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

MDT



- Montana Department of Transportation

Materials Supplier

- A vendor engaged in sales to the public from an established place of business or source of supply.

Non-hauling Equipment
Owner-Operators

- Owner-operators of non-hauling equipment (in general, equipment other than trucks) are considered to be employees, not subcontractors, and are covered by wage rate decisions.

Payrolls &
Basic Records

- Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that

the plan or program is financially responsible and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

When contractors use apprenticeship programs and federal-aid trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs is required with the first certified payroll. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

Show Cause Notice

- A written notification to a contractor based on the determination of the reviewer (or in appropriate cases by higher level authority) to be in non-compliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed.

Site of Work

- (1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (2) of this definition, other adjacent or virtually adjacent property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site."
- (2) Except as provided in paragraph (3) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, crane set-up, etc., are part of the "site of the work" provided they are dedicated to the covered construction project AND are adjacent or virtually adjacent to the location where the building or work is being constructed.
- (3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly *without regard to a par-*

particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or material man which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work," even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

- Subcontractor - An individual or organization under contract with the prime contractor or another subcontractor to perform a portion of the work.
- Supplemental Payroll - An additional payroll used to correct a deficiency or omission on a certified payroll.
- Suppliers - Contracts or subcontracts used for furnishing supplies and equipment, including installation where the installation requires only an incidental amount of work are not covered by wage rate decisions.
- Trainee - (Programs of the United States Department of Labor) means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

Some federal-aid contracts contain special provisions which include trainees. Those training programs are monitored by the CRB and are not as associated with USDOL.

- Truck Drivers
Owner-Operators - Truck owner-operators are not subject to the wage rates prescribed by the Department of Labor. Such owner-operators shall be listed on payrolls with the notation "owner-operator" after each name. Neither hours worked nor wages paid need be shown (Department of Labor All Agencies Memorandum #119, October 8, 1974).

- USDOL
- United States Department of Labor
- Wage Determination
- The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of ' 1.6 of this title. (29 CFR)
- Wages
- The term "wages" means the basic hourly rate of pay, any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program, and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other federal, state or local law.
- Withholding
- The Federal Highway Administration (FHWA) or the State Highway Agency (SHA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcon-

tractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the SHA may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

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EEO SECTION



**EEO
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EQUAL EMPLOYMENT OPPORTUNITY

1. EEO REQUIREMENTS

Executive Orders 11246 and 11375 require equal employment opportunity (no discrimination) and affirmative action (assuring equal employment opportunity) on federal-aid highway construction projects. They are set forth in Required Contract Provisions (Form FHWA 1273 or CP 529, as appropriate). These Special Provisions are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

The contractor will work with the Montana Department of Transportation (MDT) and the federal government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

The contractors and all of their subcontractors holding subcontracts of \$10,000 or more will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

The above statement establishes the conditions under which the Montana Department of Transportation and the contractors are governed.

2. ROLE OF THE EEO CONTRACT COMPLIANCE SECTION

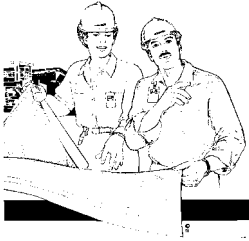
The functions of the EEO Contract Compliance Section include but are not limited to:

- providing technical assistance to field personnel, contractors and referral sources;
- providing clarification relative to federal directives and regulations;
- analyzing and evaluating contractor EEO posture;
- scheduling and conducting compliance reviews;
- approving requests for training programs submitted by contractors;
- participating in preconstruction conferences; and
- conducting informal field inspections.



SPECIFIC EEO PROGRAMS

3. FIELD INSPECTION PROGRAM



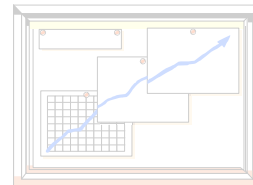
Field inspections are informal project site inspections. The purpose of the inspection is to assure that the prime contractor and each subcontractor fulfills contract required EEO obligations, labor requirements and DBE requirements. The Field Inspections may be conducted by the Civil Rights Bureau (CRB) staff or the Montana Department of Transportation Engineering Project Manager's staff.

When field inspections are conducted by the CRB staff, no prior notification is sent to the contractor. Projects are selected on a random basis. Field inspections conducted by the Engineering Project Manager are conducted during the second and fourth week the prime or subcontractor is on the project site and once a month thereafter.

The field inspection will include, but not be limited to, the following:

- a. Interview the contractor's project site supervisory staff to determine their knowledge of the company's EEO program.
- b. Interview members of the contractor's staff on the project site where they are performing their work assignments. Questions will include:
 - (1) What is your name?
 - (2) Who do you work for?
 - (3) What is your rate of pay? Are you receiving time and a half for overtime?
 - (4) Who is your company EEO Officer?
 - (5) Have you attended an EEO meeting on this project site?
 - (6) Do you know how to file a discrimination complaint?
 - (7) Do you know where the bulletin board is located?
 - (8) Are you employed by more than one contractor on this project?
- c. Interview members of the Montana Department of Transportation staff who are assigned to the project. Questions will include:
 - (1) Who is your District EEO Officer?
 - (2) Has anyone explained MDT's complaint procedure to you?
 - (3) Have you seen MDT's Sexual Harassment Policy?
 - (4) Do you see posting notices announcing vacant positions in a timely manner?

- d. Inspect the Project Manager's project site records to be sure they include the following documents:
- (1) Copies of prime and each subcontractor's discrimination complaint procedures along with claim form.
 - (2) Minutes of prime and subcontractor's on-site EEO meetings.
 - (3) If applicable, copy(ies) of approved training programs.
 - (4) If applicable, copy of monthly 7a training reports, along with supporting time cards and diary notes.
 - (5) Copies of spot check interviews.
 - (6) Notes on dates each bulletin board was checked.
 - (7) Copies of prime and subcontractor payrolls.
- e. Inspect bulletin board for the required currently dated postings. Postings must include:
- (1) EEO is the Law Poster,
 - (2) Company Discrimination Complaint Procedures (must be on company letterhead, signed by a management level official, and currently dated),
 - (3) Discrimination Complaint Form,
 - (4) Company Policy Statement (on letterhead, signed by management and currently dated and currently dated),
 - (5) Company EEO Officer appointment letter (on letterhead, signed by management),
 - (6) Dual Employment Poster,*
 - (7) Form FHWA 1273 (formerly called pink sheets),
 - (8) Wage Rates (from contract),
 - (9) Wage Rate Information Poster,
 - (10) Notice Poster*, and
 - (11) DBE Hotline Poster



*These notices have been combined on one 82X11 poster.

4. COMPLIANCE REVIEWS

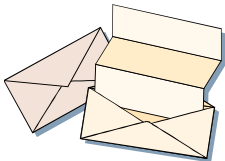


Any federal-aid highway project may be selected for a compliance review. The prime contractor, a subcontractor alone, or the prime contractor and a specified subcontractor can be reviewed. Priority in scheduling compliance reviews shall be given to reviewing those contractor work forces

- which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations);
- areas which have significant minority and female labor forces within a reasonable recruitment area;
- projects that include special training provisions;
- where compliance with equal opportunity requirements is questionable based on previous EEO5 reports, previous compliance review reports, spot checks and field inspections;
- which have not reached peak employment; (50% completed)
- which have not had a compliance review during the past construction season.

a. Contractor Notification

The Compliance Specialist will send written notification to the contractor one month prior to the review (see notification letter, page I.B.6). This notification shall include the scheduled date, an outline of the review, a list of documents required and who the review will be conducted on, prime only, subcontractor only, or the prime and a subcontractor.



- (1) The prime contractor shall provide a meeting place on the day of the compliance review at or near the job site.
- (2) The prime contractor shall supply all of the following pre-review data including that of the subcontractors to the Compliance Specialist at least seven (7) calendar days prior to the on-site verification and review:
 - Project area recruitment sources available and utilized. This should include union and non-union employee referral sources used on the project.

- Documentation of efforts to employ female and minority persons required by this contract for each trade classification on the project. **IF YOU HAVE HAD AN OPPORTUNITY TO HIRE AND HAVE NOT BEEN ABLE TO EMPLOY MIINORITIES AND FEMALES, SUBMIT A UTILIZATION ANALYSIS FOR EACH CRAFT BASED UPON CIVILIAN LABOR FORCE DATA.** Minority and female employment compliance is based on the number of hours provided to minorities and females not EMPOLYEE count.
 - Specific summarized data, including minority and female statistics on any active training program on the project is required.
 - Brief summary of significant EEO affirmative action undertaken by your company which affects the project.
 - Statements reflecting the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission, the Department of Justice, or other Federal or State agencies regarding the contractor or any subcontractors.
 - Procedures used to review subcontractors in order to determine their compliance with EEO regulations. Procedures should include corrective action.
 - Current EEO 5 report showing all employees who have worked on the project since the beginning of the current construction season.
 - Any other necessary documents or statements requested by the Compliance Specialist for review prior to actual on-site visit.
- (3) When the prime contractor is scheduled for a review, subcontractor accomplishments will be reviewed. If the subcontractor is in non-compliance, action taken by the prime contractor will be considered.

COMPLIANCE REVIEW APPOINTMENT LETTER

A formal compliance review will be conducted at the above noted project site on _____ *day of week* _____ *date*. We will begin the review at _____ A.M. by interviewing project site personnel as well as supervisory staff. Your Superintendents and Foremen will be asked about their role in your Company's EEO program. Following the on-site interviews, we will begin the "sit down" portion of the review with you.

As the designated EEO Officer for your company, it will be necessary for you to be in attendance. You should be prepared to demonstrate what good faith efforts you have made to accomplish each of the ten EEO requirements contained in your contract. You should also be familiar with what good faith efforts your subcontractors have made.

The purpose of the compliance review is to evaluate your Company's compliance with the EEO requirements in your contract. The procedures we will use to conduct the review are in your MDT Civil Rights manual on pages 4 through 12. A copy of your contract's EEO provisions are located the Laws and Regulations portion of the MDT Civil Rights manual on pages 2 through 4.

Please have a place for us to meet at the project site. It doesn't have to be fancy, just a place where we can talk and review whatever documentation you have.

Attached are statistical forms for **you** and **each subcontractor who has been active on the project** to complete and have submitted to our office at least four working days prior to the review. Our pre-review analysis of this statistical data will make the on-site review much faster and easier to accomplish. **As prime contractor it is your responsibility to assure your subcontractors have submitted the pre-review information.**

At the conclusion of the review a preliminary summary of our findings will be discussed. If deficiencies exist, we will be happy to offer suggestions or provide technical assistance to you that should assist you in developing an appropriate corrective action plan.

If you have any questions feel free to contact me at 444-6331 (TTY 444-7696).

James R. Phillips
Compliance Specialist

☐ Prime ☐ Subcontractor

Name_____

Project No._____

Designation_____

COMPLIANCE REVIEW

1. REPORT DATA FOR ALL WORKERS ON THIS PROJECT **ONLY**.
2. **DO NOT** REPORT OWNER/OPERATOR TRUCK DRIVERS.
3. OVERTIME HOURS MUST BE INCLUDED.
4. REPORT TOTAL HOURS FOR THIS CONSTRUCTION SEASON.

AS OF DATE:	TOTAL HOURS	TOTAL FEMALE HOURS	% OF FEMALE WORKFORCE UTILIZATION	TOTAL MINORITY HOURS	% OF MINORITY WORKFORCE UTILIZATION
Laborers					
Operators					
Truck Drivers					
Carpenters					
Cement Masons					
Iron Workers					
Other (specify)					
TOTALS:					

1. TOTAL NUMBER OF NEW EMPLOYEES HIRED ON THIS PROJECT ONLY:DO NOT COUNT CORE CREW EMPLOYEES

"Core Crew" is defined as a regular permanent employee who is either in a supervisory position or another key position such that the employer would risk likely financial damage or loss if the position was filled by a person who had not previously worked for that firm. A "regular permanent employee" is one who was on the contractor's payroll for the prior construction season, or is presently an owner of the firm, in contrast with a person who is hired on a project-by-project basis.

NEW HIRES

AS OF DATE:	TOTAL NEW HIRES	TOTAL FEMALE	TOTAL MINORITIES	
			MALE	FEMALE
Laborers				
Operators				
Truck Drivers				
Carpenters				
Cement Masons				
Iron Workers				
Other (specify)				

List all employees hired during this construction season **only**. (Must correspond with above numbers.)

NAME & SOCIAL SECURITY NUMBER	JOB CLASS.	ETHNIC ID	GENDER	DATE OF HIRE	RECRUITMENT SOURCE

2. TOTAL NUMBER OF TERMINATIONS ON PROJECT BEING REVIEWED:**TERMINATIONS**

AS OF DATE:	TOTAL TERMINATIONS	TOTAL FEMALE	TOTAL MINORITIES MALE FEMALE	
Laborers				
Operators				
Truck Drivers				
Carpenters				
Cement Masons				
Iron Workers				
Other (specify)				

List all employees terminated during this construction season **only**. (Must correspond with above numbers.)

NAME & SOCIAL SECURITY NUMBER	JOB CLASS.	ETHNIC ID	GENDER	DATE OF TERMINATION	REASON FOR TERMINATION

(Rev. 05/98)

FEDERAL-AID CONTRACT
CONTRACTOR REPORT

Project Number: _____

Prime ? Subcontractor ? Project Designation: _____

Contractor Name: _____ Percent Complete: _____ Dollar Amount of Contract or Subcontract: \$ _____

Report employees who have worked on this project for this construction season only.

EMPLOYMENT DATA																		
Table A																		
JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK <i>Not of Hispanic Origin</i>		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Superintendents																		
Clerical (on site)																		
Equipment Operators																		
Truck Drivers																		
Ironworkers																		
Carpenters																		
Cement Masons																		
Electricians																		
Painters																		
Laborers																		
Total																		
Table B																		
Apprentices																		
On the Job Trainees																		

Prepared by: _____ Title: _____ Date: _____

b. Preliminary Analysis

Before the on-site verification and actual compliance review, the employment patterns, policies, practices and programs of the contractor will be analyzed to determine if problems exist by reviewing:



- (1) the contractor's current work force;
- (2) the contractor's relationship with referral sources, e.g., unions, tribal employment rights offices, community action agencies, minority and female organizations, etc.;
- (3) the minority and female representation by each craft working on the project;
- (4) the availability of minorities and females with requisite skills in a reasonable recruitment area; and
- (5) any pending EEOC or Department of Justice discrimination cases.

c. On-Site Verification and Interviews

- (1) Phase II of the review will consist of a project site visit to determine if:



- EEO posters are displayed in a conspicuous, accessible and legible manner, with access to the forms, wage rates, etc. (mobile or fast-moving projects such as striping or guardrail may use a three-ring binder);
 - facilities (toilets) are provided on a non-segregated basis;
 - supervisory personnel have been oriented to the contractor's EEO commitments;
 - the employee referral source system is being implemented;
 - reported employment data is accurate;
 - meetings have been held with employees (particularly new employees) to discuss EEO policy; and
 - employees are aware of their right to file complaints of discrimination.
- (2) As many members of project work force as feasible will be interviewed.

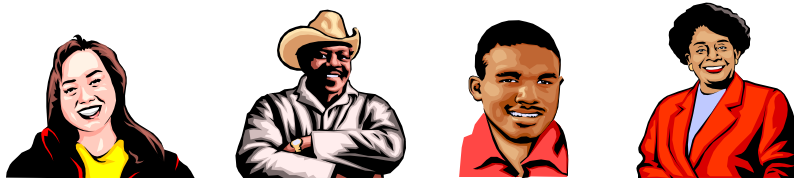
If the minority and/or female employment goals have not been achieved, and an opportunity to hire has occurred, a utilization analysis *must* be submitted with the pre-review data.

If no employees have been hired, a utilization analysis is not necessary.

To determine if an employee is a "core crew employee" or a "regular permanent employee," the following definitions should be used:

A core crew employee is a member of a contractor's or subcontractor's workforce who is a regular, permanent employee or is in a supervisory, or other key position, or one which the employer would likely risk financial damage or loss if the position was filled by a someone who had not previously worked for that firm.

A regular, permanent employee is one who was on the contractor's payroll during the previous construction season, or, is presently an owner of the firm, in contrast to an employee hired on a project-by-project basis.



(3) The following determinations will be made:

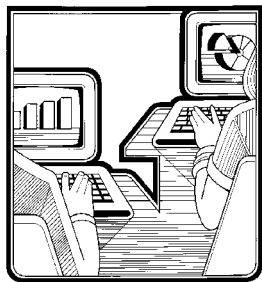
- Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation and, if not, **what has the contractor done to increase recruitment, hiring, upgrading and training of minorities and women?**
- What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?
- Are the above actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?
- Is there impartiality in treatment of minorities and women?
- Are affirmative action measures of an isolated nature or are they continuing?

- Have the contractor's efforts produced results?
- Has the contractor conducted a SEPARATE female availability analysis and a SEPARATE minority availability analysis?

(4) Utilization Analysis for Minorities

In determining whether minorities are being under-utilized in any job group, the contractor will consider at least all of the following factors:

- (i) The minority population of the labor area surrounding the facility;
- (ii) The size of the minority unemployment force in the labor area surrounding the facility;
- (iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;
- (iv) The general availability of minorities having requisite skills in the immediate labor area;
- (v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;
- (vi) The availability of promotable and transferable minorities within the contractor's organization;
- (vii) The existence of training institutions capable of training persons in the requisite skills; and
- (viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.



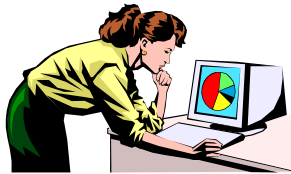
Note: A utilization analysis is a mathematical calculation based on current Census data which attempts to challenge the required minority participation by classification for federal-aid highway construction projects by county in Montana. Census information (EEO profiles) can be obtained from the Montana Department of Commerce's Census and Economic Information Center at (406)444-4214.

(5) Utilization Analysis for Females

In determining whether women are being under-utilized in any job group, the contractor will consider at least all of the following factors:

- (i) The size of the female unemployment force in the labor area surrounding the facility;

- (ii) The percentage of the female work force as compared with the total work force in the immediate labor area;
- (iii) The general availability of women having requisite skills in the immediate labor area;
- (iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;
- (v) The availability of women seeking employment in the labor or recruitment area of the contractor;
- (vi) The availability of promotable and transferable female employees within the contractor's organization;
- (vii) The existence of training institutions capable of training persons in the requisite skills; and
- (viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.



Note: A utilization analysis based on current Census data is a mathematical calculation which attempts to challenge the required female participation by classification on federal-aid highway construction projects statewide. Census information (EEO profiles) can be obtained from the Montana Department of Commerce's Census and Economic Information Center at (406)444-4214.

- (6) A contractor can be found in non-compliance when valid hiring opportunities were present, and he/she did not or could not demonstrate good faith efforts. New hires are considered employees who have not worked for the contractor the previous construction season, or who worked for another contractor before being called back to work for the contractor under review. While it is the contractor's prerogative to recall or hire anyone he/she chooses, it is their responsibility to ensure equal opportunity for minorities and women.

d. Exit Conference

- (1) During the exit conference with the contractor, the following shall be discussed:
 - preliminary findings which, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of non-compliance;
 - the process and time (15 calendar days following the on-site verification and interviews) in which

the contractor shall be informed of the final determination;

- compliance, and so notify the contractor, or
- non-compliance and issuance of a 30-day show cause notice
- any other matters that would best be resolved before concluding the on-site portion of the review.

If necessary, a voluntary corrective action plan may be negotiated at the exit conference.

The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of non-compliance, particularly if deficiencies not addressed by the plan are revealed during the final analysis and report writing. A voluntary corrective action plan will be accepted with the understanding that it only addresses those problems uncovered prior to the exit conference.

e. Compliance Determinations/Recommendations

- (1) The information obtained at the compliance review shall constitute the basis for a determination of the contractor's compliance or non-compliance with contractually required provisions of Executive Order 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.
- (2) The compliance status of the contract will usually be reflected by good faith efforts in the following areas:



- the contractor's EEO policy;
- dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;
- the authority and responsibilities of the EEO officer (does EEO Officer know his/her scope of responsibility?);
- the contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures (blanket letters at the beginning of each construction season to referral sources does not constitute good faith efforts);
- the extent of participation and minority and female utilization (use) in training programs;

- the contractor's review of personnel to ensure equal opportunities;
 - the contractor's participation in apprenticeship or other training;
 - if applicable, the contractor's efforts with unions to increase opportunities for minorities and women;
 - effective measures to assure non-segregated facilities, as required by contract provisions (Form FHWA 1273)
 - the contractor's procedures for monitoring subcontractors must be in writing and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and,
 - the adequacy of the contractor's records and reports.
- (3) a contractor shall be considered to be in compliance when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.
- (4) a contractor shall be considered to be in non-compliance when:
- if, upon investigation, it is shown that the contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment, or
 - the contractor fails to provide evidence of every good faith effort to provide equal opportunity.

f. Show Cause Procedures

- (1) General. Once the on-site verification and exit conference have been completed and a compliance determination made, the contractor shall be notified in writing of the compliance determination. Written notification shall be sent to the contractor by certified mail within 15 days following the completion of the on-site verification and exit conference. If a contractor is found in non-compliance, action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice (see Show Cause Letter, page I.B.19). The notice shall advise the

contractor to show cause within 30 days why sanctions should not be imposed.

- (2) When a show cause notice is required. A show cause notice will be issued by the Director when a determination of non-compliance is made based upon the findings of a compliance review or the results of an investigation which verifies the existence of discrimination.
- (3) The show cause notice will:
 - notify the contractor of the determination of non-compliance;
 - provide the basis for the determination of non-compliance;
 - notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;
 - schedule (date, time and place) for a compliance conference to be held (approximately 15 days from the contractor's receipt of the notice);
 - advise the contractor where the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and,
 - advise the contractor of the availability and willingness of MDT to conciliate within the time limits of the show cause notice.

(Current Date)

Subject: _____

As a result of the compliance review conducted on (date) for the above referenced project, it is our determination that you are not in compliance with your equal opportunity requirements, and good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

- (Listed Deficiencies)

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority/or/female/or/minority and female employment in your overall operations/or/trainee program.

The United States Department of Transportation Regulations 23 CFR 230, Subparts A and D, are applicable to your federal-aid highway construction contract and are controlling in this matter (see Required Contract Provisions, Form PR-1273, Clause II). 23 CFR 230.409 requires that when equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct each deficiency before you may be found in compliance.

The commitment must include the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction.

You are specifically advised that making the commitment discussed above will not preclude a further determination of non-compliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at the Montana Department of Transportation Civil Rights Bureau in Helena on (date) , at (time) , for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance once your progress reports have been verified by a follow up review.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this Agency will commence enforcement proceedings under 23 CFR 230, Subparts A and D, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any federal-aid construction contracts or subcontracts which you hold may be canceled, terminated or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by 23 CFR 230, Subparts A and D, as amended, may also be imposed.

We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to Jim Phillips, Compliance Specialist (Program Manager), Civil Rights Bureau, Montana Department of Transportation, 2701 Prospect Ave., P.O. Box 201001, Helena, MT 59620-1001, or telephone (406)444-6045.

Marv Dye
Director of Transportation

MD:__:G:EEO:__

cc: G.A. Gilmore, P.E., Chief Engineer
James Walther, P.E., Construction Engineer
FHWA

_____, DCE - _____
_____, EPM - _____

(Current)

Subject: _____

On _____ you received a 30-day show cause notice from this office for failing to implement equal employment opportunity contract requirements.

Your corrective action plan, discussed and submitted at the compliance conference held on _____, has been reviewed and determined to be acceptable. Your implementation of your corrective action plan demonstrates that you are now taking the required affirmative action and can be considered in compliance with 23 CFR 230, Subparts A and D. If it is later determined that your corrective action plan is not sufficient to achieve compliance, this rescission shall not preclude a subsequent finding of noncompliance.

In view of the above, this letter is to inform you that the 30-day show cause notice of _____ is hereby rescinded. You are further advised that if it is found that you have failed to comply with the provisions of the corrective action plan, formal sanction proceedings will be instituted immediately.

Your final corrective action data is due no later than _____.

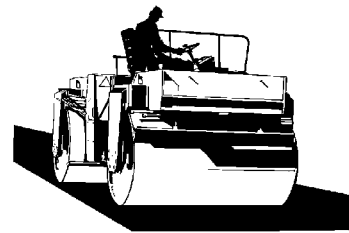
Jim Phillips
Compliance Specialist (Program Manager)
Civil Rights Bureau
Phone: 444-6045

SP:G:EEO:

cc: _____, DCE - _____
_____, EPM - _____
FHWA

5. TRAINING PROGRAMS

Some federal-aid highway projects contain a requirement that a certain number of trainees must be trained by the contractor. The criteria used to determine which projects will contain training requirements is established by the MDT Construction Bureau and the CRB.



To determine what projects will support a training program, the proposed project is reviewed for the following:

- Location - is the project located near an area which has a concentration of minority group persons?
- Type of work to be performed on the project.
- Length of time to complete the project.
- Proximity to referral sources.

The Construction Bureau and the CRB will evaluate the above data and establish the number of trainees to be assigned to the project.

When the project has been awarded, the contractor will submit a proposed training program through the MDT Engineering Project Manager (EPM) to the CRB. The CRB will review the proposed program and the EPM's comments, determine the program acceptability, request concurrence from FHWA and notify the contractor. If the proposed program is not acceptable, appropriate explanations will be provided.

TRAINING PROGRAMS MUST BE SUBMITTED AND APPROVED BY THE MDT ENGINEERING PROJECT MANAGER AND THE CRB PRIOR TO ANY ON-SITE WORK BEGINNING.

The Civil Rights Bureau maintains a statewide referral list providing contractors with names of groups know to train, dispatch and place minority and female applicants for highway construction employment. An updated version of the list can be accessed via MDT's web-site at:

<http://www.mdt.state.mt.us/>

(click on departments and then on the Civil Rights Bureau; scroll down to EEO Contract Compliance information)

The contractor may select one of three types of training programs.

One is the apprenticeship program. This program must be approved by U.S. Department of Labor in an apprenticeable craft. The indentured apprentice may perform a portion of his/her training program on an MDT federal-aid highway construction project.

Contractors may provide training under an on-the-job (OJT) program. If an OJT training program is part of the contract, an outline of the proposed training must be submitted to the MDT Engineering Project Manager. Contractors may choose a craft or classification that suits their respective project needs with OJT. Contractors can create training programs based upon special project needs if a legitimate training opportunity exists and if the EPM and CRB agree. Crafts and/or classifications may be combined. Davis-Bacon requirements must

be met. The number of trainees on a project is clearly outlined before it is advertised with this selection.

The third type of training program is one that occurs on a Montana Indian Reservation. Classification, intent, wages, tribal membership and length of training may be established by the affected tribe before a contract is let. The EPM and the CRB must agree that a legitimate training opportunity exists. The number of trainees with this selection will be negotiated between MDT and the tribe prior to project advertisement. Davis-Bacon requirements must be met.

Sample training programs can be found on the following pages. However, the CRB suggests that contractors create an OJT training program that fills a specific project or long-term employment need for the contractor when a contract includes OJT.

6. ENGINEERING PROJECT MANAGER EEO RESPONSIBILITIES

The MDT Engineering Project Manager will ensure that contract required EEO provisions have been met in the same manner as any other contractually required item. Final determination of contract compliance rests with the Civil Rights Bureau. EPM's will inform the Civil Rights Bureau of specific problems they may observe or encounter on the project site.

a. Engineering Project Manager Files

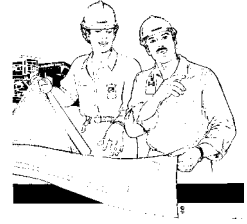
The EPM's project file must include the following information:

- (1) Copies of prime and each subcontractor's discrimination complaint procedures and the claim form;
- (2) If applicable, copy of approved training programs;
- (3) If applicable, copies of 7a monthly training reports, along with copies of time cards and appropriate diary entries;
- (4) Copies of spot check interviews;
- (5) Notes on dates each bulletin board was inspected;
- (6) Copies of prime and subcontractor payrolls.



b. Training Programs

The EPM is responsible for the preliminary recommendation of training program approval, monitoring trainee performance and verifying training hours after the trainee is placed on the project. Diary documentation of legitimate training must be maintained. The CRB must be informed immediately if a trainee is not being trained as outlined.



(1) Training Program Approval

Training Programs must be submitted by the contractor to the EPM prior to work beginning on the project site.

The EPM must review the proposed training program to determine whether the type of proposed training is feasible for the project. Criteria to consider should include:

- Is the type of work going to be available on the site?
- Is the proposed length of time reasonable for the length of time the project is going to be under construction?

The EPM must submit a recommendation for approval or non-approval with the proposed training program to the CRB. Non-approval recommendation shall include justification. The EPM must also ensure that legitimate training is occurring. The EPM and his/her staff may dedicate trainee monitoring responsibility to another field staff member. The trainee must receive training in his/her assigned classification (or classifications if a combined training outline has been created).

- (2) Upon approval by the CRB, the Engineering Project Manager will be notified. The approval notification must be maintained in the Engineering Project Manager's records.

c. Trainee Placement

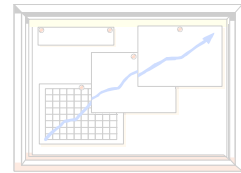
- (1) When a trainee is placed on the project, the Engineering Project Manager must notify the Civil Rights Bureau in writing within seven calendar days of the trainee's name and the date he/she began work.
- (2) While the trainee is active on the project site, the EPM or, another field staff member, must observe the trainee at least twice daily to assure the trainee's work is consistent with the approved training program. *Copies of trainee time cards must be on file in the EPM's office.*

- (3) When the 7a monthly training report is submitted by the contractor to the EPM on the 10th of the following month, the EPM must compare the hours to the payrolls, time cards, and daily diary entries to assure the hours claimed are reimbursable and that legitimate training has occurred. The EPM must sign the 7A training report verifying the hours reported by the contractor are true and correct. The EPM or his/her assigned staff member must send the fully-signed original copy to CRB by the 15th of the following month.
- (4) Final notes submitted by the Engineering Project Manager at the conclusion of the project must be in agreement with the 7a monthly training reports which the EPM has signed during the course of the project. If the final notes and the 7a training reports do not match when reviewed by the MDT Estimate Section, all documents will be returned to the Engineering Project Manager for reconciliation.

d. Bulletin Boards

The EPM must inspect each prime and each subcontractor's bulletin board at least once a month. Date and problem notations must be made in the EPM diary. If bulletin board data is missing, the Project Superintendent must be notified and requested to take appropriate action.

Bulletin boards must be located in an area accessible to all employees. They are not to be located inside tool vans.



Three ring notebooks may be used in place of a bulletin board only if the contractor is extremely mobile on the project site. For example: 1) paint stripers, 2) crews installing guardrail and 3) fencers.

The bulletin board must display the following documents:

- (1) EEO is the Law Poster.
- (2) Company Discrimination Complaint Procedures (must be on company letterhead, signed by a management level official, and currently dated).
- (3) Discrimination Complaint Form.
- (4) Company Policy Statement (on letterhead, signed by management and currently dated).
- (5) Company EEO Officer appointment letter (on letterhead, signed by management and currently dated).
- (6) Dual Employment Poster.*

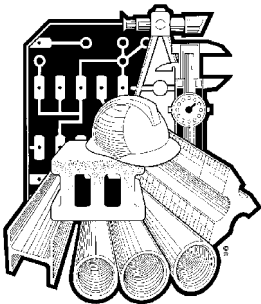
- (7) Form FHWA 1273 (formerly known as pink sheets).
- (8) Current Wage Rates.
- (9) Wage Rate Information Poster.
- (10) Notice Poster.*
- (11) DBE Hotline Poster

*These notices have been combined on one 82X11 poster.

e. Preconstruction Conference

When it is not possible for the CRB staff to attend a preconstruction conference, it is the District Construction Engineer's responsibility to assure EEO contract provisions are presented at the conference and included in the minutes.

7. CONTRACTOR'S EEO CONTRACT COMPLIANCE RESPONSIBILITIES



Each federal-aid contract awarded by the Montana Department of Transportation contains Equal Employment Opportunity Provisions. These provisions contain specific requirements which must be met by the prime contractor and each subcontractor whose contract exceeds \$10,000. These contract provisions are considered to be as binding as any other portion of the contract and will be monitored accordingly. The original copies of the required documents must be mailed directly to the Civil Rights Bureau.

Following is a brief summary of the contract requirements.

a. Equal Employment Opportunity Policy

Each prime and each subcontractor must adopt the following language as the company policy statement:

It is the policy of this company to assure that applicants are employed, and that employees are treated during employment without regard to their race, age, religion, disability, marital status, political belief, sex, color, or national origin. Such action shall include: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on the job training.

This policy statement must be presented on company letter-head, signed by a management level official, and currently

dated. It must be posted on the project site bulletin board and is a required part of each contractor's annual EEO submission.

b. Equal Employment Opportunity Officer

An individual must be designated by company management to fill the position of EEO Officer who is fully capable of effectively establishing and administering the Company's affirmative action program. The EEO Officer must have the full meaningful support of company management to effectuate a strong civil rights program. The EEO Officer must be able to effectively communicate with Superintendents and Foremen in order to apprise them of EEO responsibilities and employment goals on the project site. EEO Officers must be able to visit each project site periodically in order to assure that EEO contract requirements are being fulfilled. The Company EEO Officer must represent the contractor at any formal compliance review scheduled by the Montana Department of Transportation.

c. Dissemination of Policy

The Company's EEO policy must be disseminated to all Company employees. Those who hire, supervise, promote and discharge employees must have full knowledge of the company's EEO program and contractual obligations. Training sessions must be conducted for supervisory staff. Persons involved in recruitment and hiring must be instructed in the company's procedures for locating minority and female persons to meet contractually required employment goals.

On-site project meetings must be held with project site employees. Topics of discussion should include but not be limited to: 1) the company's discrimination complaint procedures and how they work; 2) location of the bulletin board; 3) identity and location of the Company EEO Officer and how to contact that person; 4) how an employee can qualify for training programs; 5) employee referrals of minority and female applicants. Minutes of project site meetings must be recorded and given to the EPM.

d. Personnel Actions

The Contractor's EEO Officer must be able to demonstrate that wages, working conditions, employee benefits and all recruitment and selection activities are non-discriminatory.



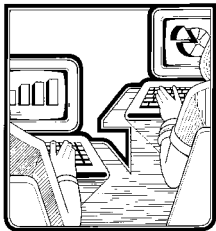
The EEO Officer must be able to demonstrate actions taken to meet the employment goals established in the contract.

A UTILIZATION ANALYSIS is an analysis of all major job groups at the project site. Under-utilization is defined as having fewer minorities or females in a particular job group than would reasonably be expected by their availability. In creating a utilization analysis, the contractor must conduct SEPARATE analyses for minorities and women.

(1) Minority Utilization Analysis

In determining whether minorities are being under-utilized in any job group, the contractor will consider at least all of the following factors:

- (i) The minority population of the labor area surrounding the facility;
- (ii) The size of the minority unemployment force in the labor area surrounding the facility;
- (iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;
- (iv) The general availability of minorities having requisite skills in the immediate labor area;
- (v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;
- (vi) The availability of promotable and transferable minorities within the contractor's organization;
- (vii) The existence of training institutions capable of training persons in the requisite skills; and
- (viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.



Note: A utilization analysis based on current Census data is a mathematical calculation which attempts to challenge the required minority participation by classification on federal-aid highway construction projects statewide. Census information (EEO profiles) can be obtained from the Montana Department of Commerce's Census and Economic Information Center at (406)444-4214.

(2) Female Utilization Analysis

In determining whether women are being under-utilized in any job group, the contractor will consider at least all of the following factors:

- (i) The size of the female unemployment force in the labor area surrounding the facility;
- (ii) The percentage of the female work force as compared with the total work force in the immediate labor area;
- (iii) The general availability of women having requisite skills in the immediate labor area;
- (iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;
- (v) The availability of women seeking employment in the labor or recruitment area of the contractor;
- (vi) The availability of promotable and transferable female employees within the contractor's organization;
- (vii) The existence of training institutions capable of training persons in the requisite skills; and
- (viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.



Note: A utilization analysis based on current Census data is a mathematical calculation which attempts to challenge the required female participation by classification on federal-aid highway construction projects statewide. Census information can be obtained from the Montana Department of Commerce's census and Economic Information Center at (406)444-4214.

e. Training and Promotion

The Contractor's EEO Officer will be expected to demonstrate how recruitment and selection procedures were used to meet the intent of the Supplemental Training Provisions which is to provide training to minority group and female persons.

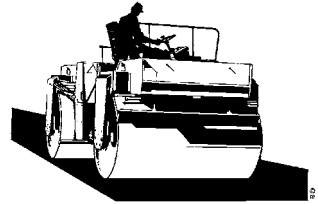
(Note: See Supplemental Training Provisions, pages 1.C.20-21.)

(1) Selection of Training Programs

The number of contractually-required trainees for a project is determined by MDT. The type of training to be provided may be determined by the contractor. The type of training and the number of hours specified by the training program must be actually available on the project site. For example, do not submit a 500-hour

truck driver training program on a project where there will only be two weeks of truck driver work available.

Once the training program has been selected, it must be submitted to the EPM who is responsible for the project. The EPM will review the training program to determine its feasibility for the project and will make appropriate recommendation to the CRB.



When a training program has been selected and approved, it may not be changed at a later date. The planning of training programs is critical.

TRAINING PROGRAMS MUST BE APPROVED BY MDT EPM, AND THE CRB BEFORE ANY CONTRACT WORK BEGINS ON THE PROJECT SITE.

(2) Placement of a Trainee

The next step in your training commitment is the selection of the trainee. The Civil Rights Bureau provides a list of suggested minority/ female referral sources. This list is updated regularly and is available via MDT's web site: <http://www.mdt.state.us/>

When final selection of the trainee is accomplished, the trainee must:

- be given a copy of the training program.
- be informed of who his/her trainer is and how to contact the trainer when questions or other problems arise;
- be informed of the type of weather conditions to be expected;
- be informed of union obligations;
- be informed of what shift hours will be worked;

Superintendents often forget trainees are not skilled persons and assume they know craft terminology and how to operate all types of equipment. Trainees are often hesitant to ask questions. Be sure that Foremen and Superintendents are fully aware of the fact that a trainee is just that – a trainee!

Placement should occur as soon as the approved program work begins on the project site.

f. Unions

In the event the union is unable to provide the contractor with a reasonable flow of minority and female referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent

recruitment efforts, fill the employment vacancies without regard to race, color, age, marital status, political belief, disability, religion, sex or national origin. The U. S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority or female employees.

A listing of minority/female referral sources is available via MDT's web site: <http://www.mdt.state.us/>

g. Subcontracting

The prime contractor is responsible for all of the actions of each subcontractor whose subcontract exceeds \$10,000. The prime contractor's EEO Officer will be expected to assure subcontractors are meeting contract required employment goals. The prime contractor's EEO Officer will be expected to assure that each subcontractor has submitted Annual EEO Submissions and pre-compliance review data within the established time frames.

h. Records and Reports

All records and reports pertaining to a specific project will be maintained by the contractor for a period of three years after the project has been accepted by the Federal Highway Administration.

EEO 5 reports must contain data which shows employees on federal-aid highway construction project(s) in the month of July. If no work is conducted in the month of July, you do not need to submit the EEO 5 report. The report form will be mailed to each contractor in early July and is due in the MDT CRB office on the second Friday in August. This report is due for each contractor on each federal-aid highway project, both prime and subs. Failure to submit this report by the second Friday in August will result in withholding 50% of the next scheduled project estimate. See example in this section. This report is to be mailed directly to the Civil Rights Bureau.



7A Training reports establish the identity of contract required trainees, recruitment source used, the number of hours of training provided to each trainee each month and gives the trainee feedback on how they are doing in the program. SIGNATURES ARE REQUIRED FOR EACH REPORT! These reports are due to the EPM on the 10th of the following month. See 7a monthly report example in this section or access it via MDT's web site: <http://www.mdt.state.us/>

i. Annual EEO Submission

The Annual EEO Submission must be submitted by every prime and subcontractor each year prior to any contract related work being performed. The submission consists of:

- (1) Policy Statement on company letterhead signed by management level, currently dated (see page 48).
- (2) Discrimination Complaint Procedure, on company letterhead, currently dated, signed by management level.
- (3) Discrimination Complaint Form on letterhead, and
- (4) Letter identifying company EEO officer and outlining that person's authority and responsibility, currently dated and signed by management level.

Samples of these documents appear later in this section and are also available via MDT's web site:

<http://www.mdt.state.mt.us/>(choose contractor's system or the Civil Rights Bureau via departments).

MONTANA TEAMSTER'S TRAINING PROGRAM

PROJECT # & DESIGNATION _____

We hereby request approval to utilize the Montana Standard Training Program for a Teamster. We will provide a minimum of 500 hours. The trainee will receive a copy of the training program.

With reference to Section 3B of the program, training will be provided in the following selected area(s).

- | | | |
|---|-------|------|
| 1. Basic Operation | _____ | Hrs. |
| 2. Dump Truck | _____ | Hrs. |
| 3. Truck/Trailer Combo | _____ | Hrs. |
| 4. Service and Fuel Trucks | _____ | Hrs. |
| 5. Water Trucks | _____ | Hrs. |
| 6. Trucks w/Power Equipment | _____ | Hrs. |
| 7. DW20, DW21 or Euclid Tractor Pulling | _____ | Hrs. |
| Dump Wagons or Water Tanks | _____ | Hrs. |

The payroll classification(s) will be _____

It is acknowledged that the training and upgrading of minorities and women toward journey worker status is a primary objective of the contract training special provisions. Accordingly, it is understood that the use of this training program does not relieve us of our contract responsibilities to make every effort to enroll women and minority trainees as defined by the contract EEO Special Provisions.

Company Name and Address _____

Company EEO Officer _____
(Date)

APPROVED BY: Montana Department of Transportation
Engineering Project Manager

BY: _____

Montana Department of Transportation
Program Manager

BY: _____

TRUCK DRIVER (MULTI REAR AXLE)

It is acknowledged that the training and upgrading of minorities and women toward journey worker status is a primary objective of the contract training special provisions. Accordingly, it is understood that the use of this training program does not relieve us of our contract responsibilities to make every effort to enroll women and minority trainees as defined by the contract EEO Special Provisions.

1. Minimum qualifications for trainees shall be as follows:

- A. Ability to comprehend and comply with established safety rules and regulations as well as procedures necessary to prevent injury to self and others.
- B. Possess a valid Montana driver's license.

2. Minimum training time will be 500 hours

3. Training Schedule

A. Orientation and Observation

- 1. Safety procedures shall include but not be limited to: (a) personal safety and protective equipment, (b) safety practices to be followed in use of equipment, (c) proper fire prevention procedures, (d) safety practices for fueling, lubricating and servicing equipment, (e) proper use of hand signals.
- 2. Trainee will observe actual operation of equipment as a passenger. The trainee will be given a copy of the training program and it will be fully explained to him/her.
- 3. Applied care and maintenance procedures shall include but not be limited to: (a) storage of tools, (b) storage of fuels, grease, and oils, (c) how to change attachments and make minor adjustments, (d) types and frequency of oil and greasing, (e) what fuels the equipment uses, (f) spotting and reporting malfunctions and unusual wear.



B. Actual Application and/or Operation

- 1. Basic operation - including but not limited to: (a) routine fueling and servicing, (b) starting and manipulation, (c) Tire man procedures. NOT TO EXCEED 50 HOURS.

2. Dump Truck - including but not limited to: (a) proper backing techniques, (b) proper loading techniques, (c) proper dumping procedures including spreading of material, (d) entry and exit procedures for scales.
 3. Truck-Trailer Combinations - including but not limited to: (a) proper backing techniques, (b) proper loading techniques, (c) proper dumping procedures including spreading of material, (d) entry and exit procedures for scales.
 4. Service and Fuel Trucks - including but not limited to: (a) proper fueling techniques, (b) proper loading of fuels and related materials, (c) use of related tools such as fire extinguishers.
 5. Water Trucks - including but not limited to: (a) proper loading procedures, (b) proper backing techniques, (c) proper manipulation of spray bars.
 6. Trucks with Power Equipment - including but not limited to: (a) A Frame, (b) hydra lift, (c) winch, (d) grout-crete.
 7. DW20, DW21, or Euclid Tractors pulling dump wagons and water tankers - including but not limited to: (a) proper backing techniques, (b) proper loading techniques, (c) proper dumping techniques, (d) familiarization with additional safety requirements adherent to these particular types of trucks.
- C. The contractor will provide a certification of completion of training, both to the trainee and the Montana Department of Transportation.
- D. The contractor will provide monthly 7A training reports to the Montana Department of Transportation's Engineering Project Manager.

MONTANA LABORER'S TRAINING PROGRAM

PROJECT # & DESIGNATION _____

We hereby request approval to utilize the Montana Standard Training Program for a HEAVY AND HIGHWAYS SKILLED LABORER. We will provide a minimum of 500 hours. Training will begin as soon as actual construction begins. The trainee will receive a copy of the training program.

With reference to Section 4D of the program, training will be provided in the following selected area(s).

- | | |
|--|-----------------------------------|
| 1. Flagger _____ Hrs.
(Not to exceed 40 Hrs.) | 6. Asphalt _____ Hrs. |
| 2. Grade Setter _____ Hrs. | 7. Concrete _____ Hrs. |
| 3. Dirt Work _____ Hrs. | 8. Fencing _____ Hrs. |
| 4. Pipe Layer _____ Hrs. | 9. Guardrail & Signing _____ Hrs. |
| 5. Gravel _____ Hrs. | 10. Rock Excavation _____ Hrs. |

Pay scale for this trainee will be at least the minimum prevailing rate (per contract requirement). The payroll classification(s) will be _____.

It is acknowledged that the training and upgrading of minorities and women toward journey worker status is a primary objective of the contract training special provisions. Accordingly, it is understood that the use of this training program does not relieve us of our contract responsibilities to make every effort to enroll women and minority trainees as defined by the contract EEO Special Provisions.

Company Name and Address _____

Company EEO Officer _____
(Date)

APPROVED BY: Montana Department of Transportation
Engineering Project Manager

BY: _____

Montana Department of Transportation
Program Manager

BY: _____



MONTANA LABORER'S TRAINING PROGRAM

1. It is acknowledged that the training and upgrading of minorities and women toward journey worker status is a primary objective of the contract training special provisions. Accordingly, it is understood that the use of this training program does not relieve us of our contract responsibilities to make every effort to enroll women and minority trainees as defined by the contract EEO Special Provisions.
2. Minimum qualifications for trainees shall be as follows:
 - A. Ability to understand and comply with established safety rules and regulations and procedures necessary to prevent injury to self and/or others.
 - B. Disabled trainees will be considered if the training program can be performed safely.
3. Total training time will be a minimum of 500 hours.
4. Training Schedule.
 - A. Orientation and observation.
 - 1) Safety procedures shall include the following:
 - a. Required use of safety and protective equipment.
 - b. Proper fire prevention procedures.
 - c. Safe handling and moving of equipment used in regularly assigned duties.
 - d. Necessary safety practices for related equipment.
 - e. Necessary safety practices for use of electrical small tools. (Small tools defined as tools used by Laborers as required on the job.)
 - f. Use of proper hand signals.
 - 2) Observation of basic skills.
 - a. Completion of time cards.
 - b. Company procedures, i.e. safety, payroll, work schedule; names and uses of equipment used in the normal work activities and observation of proper use.
 - c. Trainee is to receive copy of training program. Explanation of job requirements, with review of training program.

3) Manipulation of tools or equipment.

The trainee will be instructed in the proper use of tools and equipment used as a part of the regularly assigned duties.

B. Care and Maintenance or Special Preparations.

1) Safety procedures.

- a. Review and completion of items in Section (1) under Orientation and Observation.
- b. Emphasis of safety procedures specifically falling in the work or skill areas that trainee will be involved in.
- c. The care and maintenance of tools and equipment, including personal safety gear.
- d. Proper fueling safety procedures.
- e. Electrical or similar safety procedures as apply to the job.

2) Applied care and maintenance procedures.

- a. Storage of tools, equipment, materials.
- b. Materials handling and care.
- c. Proper storage of fuels, greases and oils as used in job related areas.
- d. Where applicable, how to change attachments and how to make minor adjustments as necessary.
- e. Types and frequency of oil and greasing.
- f. What fuels the equipment properly uses (fuel mix).
- g. Spotting and reporting unusual wear or malfunction of equipment to the proper authority.

C. Applied techniques or methods of highway construction.

1) Safety procedures.

Special emphasis on precautions in actual operation of duties assigned to trainee in each area of training.

- 2) Techniques and methods to be integrated with actual operation (item D) on a "show-me" basis in each area of skill.

D. Actual Application & Operation

- 1) Flagger - Maximum 40 hours including 8 hours classroom and 16 hours directly supervised (intent is to provide direct supervision periodically throughout the first 16 hours of on-the-job training. Classroom training must be provided by a certified instructor with a certificate issued by the instructor). All federal-aid highway construction projects will require certified flaggers in the near future.
- 2) Grade Setter - including but not limited to hand level and all survey related items.
- 3) Dirt Work - Including but not limited to: (a) cleanup, (b) rock picking, (c) stake jumping.
- 4) Pipe layer - including but not limited to: (a) grade setting, (b) mechanical tamping, (c) pipe installation, (d) related operations.
- 5) Gravel - including but not limited to: (a) crusher work, (b) scale operations, (c) dumpman, (d) stake jumping.
- 6) Asphalt - including but not limited to: (a) batch plant, (b) laydown, (c) raking, (d) string lines, (e) dumpman, (f) chip and seal.
- 7) Concrete - including but not limited to: (a) batch plant, (b) form setting & stripping, (c) vibrator, (d) curb machine, (e) finishing, (f) pavement breaker.
- 8) Fencing - including but not limited to: (a) post driving, (b) hanging wire, (c) clearing fence line, (d) removal, (e) chain saw & related tools.
- 9) Guardrail & Signing - including but not limited to: (a) post installation, (b) rail installation, (c) grade setting, (d) sign installation, (e) portable signs, (f) all related tools.
- 10) Rock excavation - including but not limited to: (a) powderman, (b) chuck tender, (c) nipper, (d) high scaling, (e) all drills and related tools.

5. The contractor will provide documentation of each trainee's evaluation as follows:

- A. Each trainee will be reviewed monthly.
 - B. The contractor's supervisor of training will certify each trainee's evaluation on the 7a monthly report form.
- 6. The contractor will provide a certification of completion of training describing the type and length of training satisfactorily completed and acknowledging the trainee as skilled in the work classification for which trained.
 - 7. The contractor will submit the 7A training reports on a monthly basis to the appropriate EPM for each trainee filling an approved training slot. These reports are due to the EPM no later than the 10th of the following month.

MONTANA OPERATOR'S TRAINING PROGRAM

PROJECT # & DESIGNATION _____

We hereby request approval to utilize the Montana Standard Training Program for a heavy or highway on-the-job training program, as outlined below for a **Operator Apprentice** _____ **Operator OJT** _____. We will provide a **minimum of _____ hours of training** on the above cited project. Training will begin as soon as actual construction begins. The trainee will receive a copy of the training program.

Training will be provided in the following selected areas for the number of hours shown:

Scraper (any type)	_____	Roller	_____
Gravel Crusher &	_____	Front End Loader	_____
Quality Control Testing	_____	Backhoe	_____
Crane	_____	Motor Patrol (Blade)	_____
Mechanic	_____	Asphalt Pavers & Screeds	_____
Concrete Probe	_____	Welding	_____
Power Broom	_____	Dozer	_____
Grade Setter	_____	Disc	_____
Other	_____		

Purpose: To train an inexperienced or partially experienced individual in the skills and knowledge necessary to become a journey worker Operating Engineer. The intent of this program is to ensure that over the course of the program, a skilled and valuable employee will be developed.

It is acknowledged the training and upgrading of minorities and females toward journey worker status is a primary objective of the contract **Supplemental Training Provisions**. Accordingly, it is understood that the use of this training program does not relieve us of our contract responsibilities to make every effort to enroll minority and female trainees as defined by the contract EEO Special Provisions.

Company Name and Address: _____

Company EEO Officer: _____ (Date)

Approved by: Montana Department of Transportation
Engineering Project Manager

By: _____

Montana Department of Transportation
Program Manager

By: _____

OPERATING ENGINEER APPRENTICESHIP PROGRAM

2-80

Heavy Duty Repairmen and Welders

A.	Cleaning & Inspecting Parts	200 hrs.
	B. Transmission	400
	C. Final Drives	400
	D. Fuel Systems	200
	E. Electrical System	450
	F. Water Cooling Systems	200
	G. Clutch	200
	H. Cylinder Heads	300
	I. Cylinder blocks and Liners	700
	J. Hydraulic Systems	400
	K. Field Repairs and Maintenance	600
	L. Welding, Cutting, Burning	300
	M. Miscellaneous	open

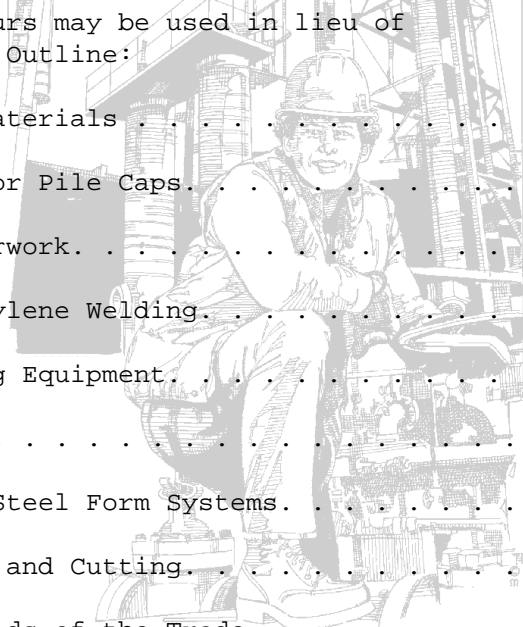
Universal, Grading, Paving & Plant Operator

Scrapers - Any Type	700
Track Type Tractor With or Without Attach	750
Front End Loader	400
Motor Patrol	500
Roller Grading, Gravel, Hot Mix	650
Service Oiler Helper, Minor Adjustment	500
Grade Setting, Checking & Plans	300
Cranes, Shovels, Draglines	700
Backhoe	500
Concrete & Asphalt Plants	800
Asphalt Pavers, Screeds	700
Crushing, Screening & Washing Plants	1000
Erecting, Disassembly Plant Equipment	300
Miscellaneous Equipment	open

ADDENDUM TO: MONTANA STATEWIDE CARPENTER'S JATC APPRENTICESHIP
STANDARDS REGISTERED 10/20/78

The following work experience outline is a supplement to the carpenter work experience outline (Appendix B) contained in the Standards. Apprentices employed in highway construction may substitute up to 4000 hours training experience received for other training required by the carpenter work experience outline.

WORK EXPERIENCE OUTLINE - BRIDGE CARPENTER



The following hours may be used in lieu of Residential Work Outline:		APPROXIMATE HOURS
A.	Tools and Materials	160
B.	Form Work For Pile Caps.	300
C.	Basic Timberwork.	300
D.	Oxygen-Acetylene Welding.	40
E.	Pile driving Equipment.	300
F.	Rigging.	400
G.	Fabricated Steel Form Systems.	300
H.	Arc Welding and Cutting.	60
I.	Special Fields of the Trade.	800
	1. Coffor Dams	(350)
	2. Sheet Piling.	(350)
	3. Transit and Level	(30)
	4. Maintenance and Care of Outboard Motors, Pumps and Light Plants.	(70)
J.	Driving of Piles	400
K.	Signaling.	200
L.	Bridge Construction.	700
M.	Driving.	40
	TOTAL	4000

EEO 7A MONTHLY TRAINING REPORT

INSTRUCTIONS: The original and one copy of this report are due in the office of the MDT Engineering Project Manager by the **10th day of the month following the training.** A report must be submitted for each trainee in an approved training slot on each project.

Project No: _____
Designation: _____
Contractor: PRIME _____ SUB _____
Contractor's Name: _____

Report Covers Month of: _____
Pay Periods: _____ through _____
Replacement: (circle one) Yes No
Original Trainee: _____

Ethnicity: (circle one) Native American Spanish
Gender: Male _____ Female _____
Trainee Name and Home Address: _____

Asian Black White

Date Trainee Started On This Project: _____

Trainee Received Copy Of Training Program:
 (circle one) Yes No

Source Trainee Was Recruited From _____

Trainee Classification: (circle one) LABORER APPRENTICE LABORER OPERATOR APPRENTICE
 OPERATOR TEAMSTER APPRENTICE TEAMSTER CARPENTER APPRENTICE CARPENTER
 CEMENT FINISHER APPRENTICE CEMENT FINISHER OTHER (EXPLAIN) _____

PLEASE RATE TRAINEE IN THE FOLLOWING AREAS

*U = Unacceptable *N = Needs Improvement S = Standard A = Above Standard *E = Excellent

Safety	Productivity	Quality	Understanding	Attitude	Attendance	Total Hours This Month	Total Hours To Date

***If U, N or E please explain:**

Additional comments regarding trainee's progress this month:

Trainee's Signature: _____ Date: _____

Trainer's Signature: _____ Date: _____

Project Superintendent's Signature: _____ Date: _____

MDT Engineering Project Manager's Signature: _____ Date: _____

MDT's EPM will verify all information against payrolls, time cards and diary entries and will submit a signed copy to the Civil Rights Bureau.

REVISED 8/99

(ON COMPANY LETTERHEAD)

ABC CONSTRUCTION COMPANY

P.O. Box 123

Anywhere, MT 59000-0123

phone number

fax number

e-mail address

CURRENT DATE

POLICY STATEMENT

It is the policy of this company, (Company Name), to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, disability, marital status, age or national origin. Such action shall include: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship and/or on-the-job training.

Company President

ABC CONSTRUCTION COMPANY
P.O. Box 123
Anywhere, MT 59000-0123
phone number
fax number
e-mail address

CURRENT DATE

The Company EEO Officer for ABC Construction Company is
 (NAME) . He/she will effectively establish and administer the
Company's Affirmative Action Program. He/she will have the meaningful
backing and cooperation of Company management in order to effectuate a
civil rights program. Open communication with minority group and female
organizations will be established and maintained. He/she will provide
training to project supervisory personnel relative to their EEO respon-
sibilities and will perform complaint investigations as the need arises.

Company President

ABC CONSTRUCTION COMPANY
P.O. Box 123
Anywhere, MT 59000
phone number
fax number
e-mail address

(The purpose of this procedure is to resolve issues at the lowest possible level. The failure of a complainant to report the alleged incident within 10 days in no way precludes filing with other agencies within specified times, normally 180 days.)

EMPLOYEE DISCRIMINATION COMPLAINT PROCEDURE

It is the policy of **(COMPANY NAME)** to provide a complete and impartial system of investigation and corrective action concerning any and all alleged discrimination complaints against employees or applicants of this company. The following procedure will be made available to and discussed with all employees:

- STEP 1:** Any employee or applicant of **(COMPANY NAME)** who feels he/she has been discriminated against may file an **EMPLOYEE DISCRIMINATION CLAIM FORM**, which may be obtained from the Project Supervisor. This report should be completed and filed within ten days of the alleged incident with the Company EEO Officer. The Company EEO Officer's name and address is posted on the project site bulletin board.
- STEP 2:** For federal-aid highway projects, a copy of the completed Employee Discrimination Claim Form for each complaint will be forwarded to the Montana Department of Transportation's Civil Rights Bureau, within seven days.
- STEP 3:** Within seven days of the receipt of the complaint, the Company EEO Officer will meet with the affected persons in order to try and resolve the complaint. A conciliation conference will be held. Attendees at this conference should include, at a minimum, the complainant, the person against whom the complaint is filed and the Company EEO Officer.
- STEP 4:** If the complaint is resolved at the conciliation conference, a "Statement of Resolution" will be prepared and signed by the Company EEO Officer, the complainant and the person(s) against whom the complaint was filed. The "Statement of Resolution" will be specific in detailing any mutual agreement made by the respective parties involved.

STEP 5: For federal-aid highway projects, the Company EEO Officer will prepare a "Report of Investigation" at the conciliation conference which will be specific in detailing each step of his/her investigation. This report must include, but not be limited to: (a) a listing of all persons interviewed and results of those reviews; (b) minutes and results of the conciliation conference; (c) if appropriate, the signed Statement of Resolution. This Report of Investigation will be forwarded to the Montana Department of Transportation's Civil Rights Bureau, within 15 days from the date of the conciliation conference.

Notice should be given to other contracting agencies as appropriate.

For federal-aid highway projects, if the complaint cannot be resolved at the contractor level, the complainant or respondent (contractor) may request that the Civil Rights Bureau investigate the complaint. The Civil Rights Bureau will conduct its investigation and make recommendations to both parties within 30 days after being asked to do so.

The complainant will be advised of his/her other avenues of complaint or appeal which are:

- **Montana Human Rights Bureau**
P.O. Box 1728
Helena, MT 59624-1728
(800) 542-0807, (406) 444-2884
- **Equal Employment Opportunity Commission (EEOC)**
303 E. 17th Ave., Suite 510
Denver, CO 80203
(800) 669-4000, (303) 866-1300
- **State or Federal Courts**

Complaints must be filed with the preceding agencies within 180 days.

Should the complaint not be on a Federal-aid highway project, the company EEO Officer shall inform the complainant of other proper avenues of appeal.

Company President

Current Date

ABC CONSTRUCTION COMPANY
P.O. Box 123
Anywhere, MT 59000-0123
phone number, fax number, e-mail address

EMPLOYEE DISCRIMINATION CLAIM FORM

Name: _____

Address: _____

(Street)

(City)

(State & Zip)

(Telephone)

.....
The person/employer whom I believe has discriminated against me is:

Name: _____

Address: _____

(Street)

(City)

(State & Zip)

(Telephone)

.....
Dates, location and/or project number of construction site where I believe the
discrimination took place:

.....
Cause of Discrimination:

☐

Age

☐

Sex

☐

Race, National Origin or Color

☐

Disability

☐

Marital Status

☐

Creed or Religion

.....
Use the back of this form to briefly write the details of what happened. Be specific
regarding names and dates.

(Signature)

(Date)

Q:\EEO\Annual EEO Format.doc

Contractor Name: _____

This report must contain the number of employees for all of your federal-aid highway projects during the month of July, 1999 only. This report is due in the Civil Rights office no later than August 6, 1999.

EEO-5 EMPLOYEE COUNT

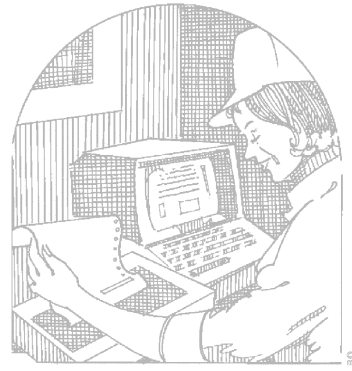
Federal-aid highway construction projects worked on during July, 1999 only: _____

EMPLOYEES BY GENDER AND ETHNICITY																			
Table A																			
JOB CATEGORIES		TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK <i>Not of Hispanic Origin</i>		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE <i>Not of Hispanic Origin</i>		APPRENTICES		ON THE JOB TRAINEES	
		9-13*	14-18*	19-23*	24-28*	29-33*	34-38*	39-43*	54-58*	49-53*	54-58*	59-63*	64-68*	69-73*	74-78*	79-83*	84-88*	89-93*	94-98*
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
02 Officials (Managers)	5*																		
03 Supervisors	10*																		
04 Foremen	15*																		
05 Clerical	20*																		
06 Equipment Operators	25*																		
07 Mechanics	30*																		
08 Truck Drivers	35*																		
09 Ironworkers	40*																		
10 Carpenters	45*																		
11 Cement Masons	50*																		
12 Electricians	55*																		
13 Pipefitters, Plumbers	60*																		
14 Painters	65*																		
(Groups 2, 3 & 4) 15 Laborers, Semi-skilled	70*																		
(Group 1) 16 Laborers, Unskilled	75*																		
17 TOTAL																			
Table B																			
18 Apprentices	80*																		
19 On-the-Job Trainees	85*																		

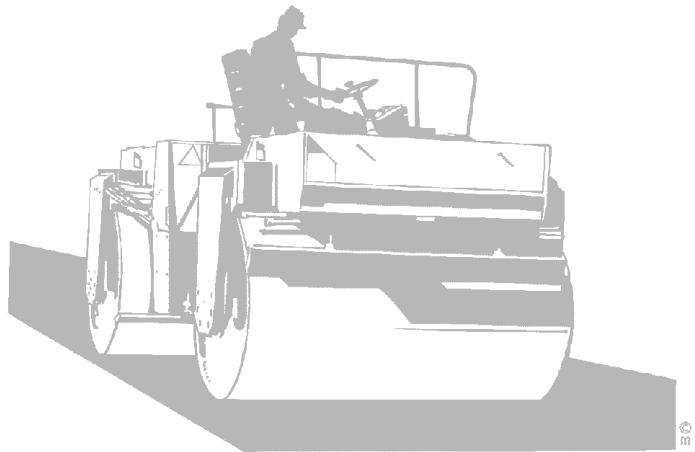
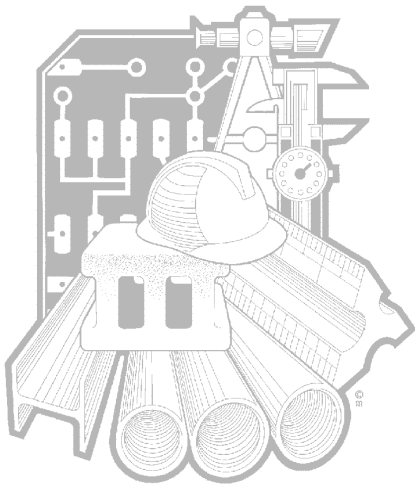
Prepared by: _____ Title: _____ Date: _____

FAILURE TO SUBMIT THIS FORM BY **AUGUST 6, 1999** MAY RESULT IN A VIOLATION OF THE TERMS OF YOUR CONTRACT.

NOTE: If a line item is zero, please leave the space blank.



LABOR SECTION



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LABOR COMPLIANCE

1. ROLE OF THE LABOR COMPLIANCE SECTION

The functions of the Labor Compliance Section include but are not limited to:

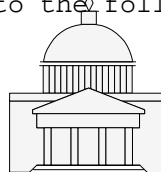
- providing technical assistance to field personnel, contractors and referral sources;
- providing clarification relative to federal directives and regulations;
- analyzing and evaluating contractor labor posture;
- scheduling and conducting compliance reviews;
- participating in preconstruction conferences;
- conducting informal field inspections.

Pursuant to the labor provisions, representatives of the Montana Department of Transportation and the U.S. Department of Labor are authorized to conduct such investigations as are necessary to assure compliance with labor standards provisions. Investigations may be made in to all contracts with such frequency as needed to assure compliance. Investigations include, but are not limited to, confidential interviews with employees, examination of payroll data and related documents, and evidence of fringe benefit payments.

federal-aid contracts awarded by the Montana Department of Transportation (MDT) are subject to the following federal labor laws:

2. FEDERAL LABOR REQUIREMENTS

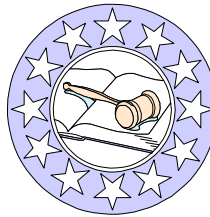
a. Davis-Bacon Act



- (1) Wages paid to laborers and mechanics must not be less than predetermined hourly rates including fringe benefits shown in the minimum wage schedule.
- (2) Laborers and mechanics must be properly classified and paid according to the work actually performed.
- (3) Laborers and mechanics must be paid not less often than once a week.
- (4) The minimum wage schedule, including fringe benefits, and the minimum wage poster must be posted at project site.

b. Copeland "Anti-Kickback" Act

- (1) Full wages earned must be paid.
- (2) Deductions from wages must be authorized. The only legal deductions are FICA (Medicare and Social Security Tax), State and Federal Withholding taxes. Any other deductions must be authorized in writing by the employee. This signed authorization must accompany the first payroll on which the deduction occurs.
- (3) Weekly statement of compliance must be submitted with all project payrolls including the subcontractor's.



c. Contract Work Hours and Safety Standards Act of 1962 (CWHSSA)

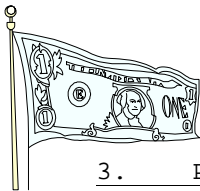
- (1) Forty hours is the standard work week;
- (2) One and one-half times basic hourly rate of pay, exclusive of fringe benefit payments, for all hours over 40 in a work week;
 - (a) In the case of an employee working for two or more employers, all hours worked under the same contract are to be counted for purposes of CWHSSA OT even though the employers are disassociated or otherwise separate, such as a contractor or subcontractor.
 - (b) An employee working for the same contractor on two or more separately awarded contracts subject to the CWHSSA is entitled to have the hours worked on all such covered contracts combined and to receive OT for all such hours worked in the work week in excess of 40 in a week.
- (3) The term "basic rate" means the straight time hourly rate actually being paid, and shall not be confined to the contract minimum rate in computing the overtime rate;
- (4) Prime contractor is liable to all employees for unpaid wages;

- (5) Prime contractor is liable to Federal government for *liquidated damages* at \$10.00 per day, per employee, per violation;
- (6) Prime contractor is subject to withholdings for unpaid wages and liquidated damages; and
- (7) The falsification of certified payrolls or statement of compliance may subject the contractor to civil or criminal prosecution under Section 1001 of Title 18 & Section 231 of Title 31 of U.S. Code.

d. False Information Act

The making or use of false statements is a felony under Title 18, Section 1020, U.S. Code.

- e. Contractors may be subject to State of Montana Labor Laws on those projects which do not contain federal funding. For additional information, contact: Montana Department of Labor & Industry - Wage & Hour Division, State Capital, Helena, MT 59620 (406)444-5600.



3. PREVAILING WAGE RATES

The Davis-Bacon Act governs federal-aid highway contracts in excess of \$2,000 by requiring the wage rates be paid in accordance with the Federal Davis-Bacon applicable to each project. All subcontracts on the project are then "fully covered." Wage rates established in a federal-aid highway contract is in force for the duration of a project.

The Federal Davis-Bacon wage rates for an area, such as Montana, are based upon the general wage activity for that area. Montana historically has been considered a unionized area. Labor agreements exist between the various unions and the contractors. These agreements generally provide the basis for the Federal Davis-Bacon wage rates after publication in the General Wage Determinations.

The Civil Rights Bureau solicits and receives copies of the signed bargaining agreements which are forwarded to the U.S. Department of Labor (U.S.DOL). The U.S.DOL determines whether the rates in the bargaining agreements are "prevailing." If so, the rates are then published. Upon publication, the rates become prevailing and are included in federal-aid highway contracts.

4. CERTIFIED PAYROLL REQUIREMENTS

Two copies of each weekly certified payroll must be submitted by the prime contractor and each subcontractor to the MDT Engineering Project Manager within seven days following the end of the pay period. Delay in the submittal of the certified payroll can result in the withholding of progress payment.

Certified payrolls and statements of compliance must be complete.

The prime contractor is responsible for the submittal of payrolls by his/her subcontractors.

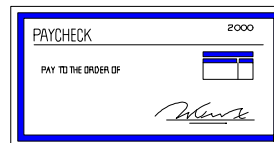
All basic records pertaining to the payrolls, including time cards, must be preserved for a period of three years by the contractor after final completion of the contract.

All persons performing work on the job site must be shown on the payroll.

a. Payroll Content

All payrolls, either the WH 347 or a computerized payroll, must contain the following information:

- The employee's full name must be shown on each weekly payroll submitted. The employee's address and social security number must also be shown on the payroll covering the first week in which the employee worked on the project. (*General Delivery is not an acceptable address.*) The employee's address need not be included on subsequent payrolls unless an address change occurs;



- The employee's work classification describing the work being performed by the employee;
- The employee's hourly wage rate and, when applicable, the overtime hourly wage rate;
- Fringe benefits, when paid in cash;
- The employee's daily and weekly hours worked in each classification including actual overtime hours worked;
- The net wages paid; and
- Each week worked on a project must be numbered consecutively. Supplemental (amended/corrected) payrolls must be assigned a letter for each correction that occurs (example first supplemental 1a, second 1b, etc.).

b. Deductions

The only legal deductions are State and Federal Withholding tax and FICA (Medicare & Social Security Tax). Any other

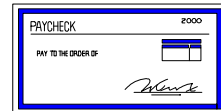
deductions must be authorized in writing. There are two types of deductions. They are voluntary and involuntary:

(1) Voluntary

If a deduction is withheld from an employee's wage and is shown on the certified payroll, it must be authorized in writing and signed by the employee. Such deductions are travel advance, tool advance, cash advance, credit union deposit, United Way deductions, etc.

The signed authorization must include:

- a) employee's name
- b) the amount
- c) the duration of the deduction
- d) the reason



This signed authorization must be submitted by the employer with the first payroll on which the deduction occurs. This process must be repeated for each federal-aid highway contract the employee is working on.

(2) Involuntary (court ordered)

- (3) If a deduction is required to be withheld by court order from an employee and is shown on the certified payroll, it must be explained by the employer in writing. *The CRB does not want a copy of the court-order --- just an explanation from the contractor, under remarks on the certified payroll statement of compliance.* Such deductions are child support, garnishment, etc.

The written explanation in the remarks section of the certification sheet must include:

- a) employee's name
- b) the amount
- c) the duration of the deduction
- d) reason

This written explanation must be submitted by the employer with the first payroll on which the deduction occurs. This process must be repeated for each federal-aid highway contract the employee is working on.

c. Overtime

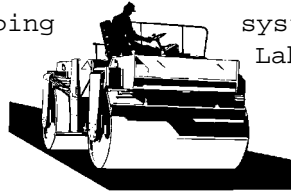
All hours worked in excess of 40 hours a week on federal-aid project(s) must be paid to the worker at one and a half times the basic wage rate. The term "basic wage rate"

means the straight time hourly rate actually being paid and zone pay if applicable. Fringe benefits are not paid at one and a half times the rate when they are *displayed separately* on the certified payroll.

d. Classifications

The employee's job classification on the payroll must be complete and in accordance with the wage determination contained in the MDT contract. All classifications of work, i.e., laborer, operator, carpenter, plus the appropriate group, must be listed on the certified payroll for each worker.

If the classification description used by a contractor differs from the classification in the contract, the contractor must submit two copies of the company's classification conversion codes with the first payroll. These contractor codes must be easily comparable to the classification grouping system provided by the U.S. Department of Labor.



Contractor Identification
Common Laborer

USDOL Identification
Group 2 Laborer

The classifications and nomenclature listed in the wage rate decision of the Secretary of Labor and any supplements or modifications thereto must be used.

The classifications which accurately describe the duties of the work being performed must be used.

Laborers and mechanics may be classified in one or more classifications. If multiple classifications are used, an accurate record of the time spent in separate classifications of work must be maintained.

e. Statement of Compliance

Each payroll is to be accompanied by a statement of compliance which is to be signed by an authorized agent of the contractor who has knowledge of the facts represented to be true. The Statement of Compliance verifies the payrolls are correct and complete, that the wage rates contained therein are not less than those required by the contract wage determination, and that the classifications set forth for each laborer or mechanic conform with the work performed.

f. Supplemental Payrolls

If there is an underpayment of wages, a supplemental certified payroll must be furnished as proof that restitution has been made. A SUPPLEMENTAL PAYROLL SHOULD INDICATE ONLY THE AMOUNT PAID TO THE EMPLOYEE AS RESTITUTION OF WAGES DUE, not the entire amount paid to the employee for the week which the underpayment occurred. In some instances, it may be necessary to furnish additional proof of payment, photo copies of both sides of the adjustment check or a signed receipt from the employee may be requested. Willful failure to pay any wages due, including fringe benefits, can result in fines, debarment and possible criminal action.

Supplemental certified payrolls may also be requested when such problems as lack of classification, improper identification (no social security number or address), or omitted employees occur.

g. Fringe Benefits

The prevailing fringe benefits are set forth in the contract wage determination and are required to be paid for both straight and overtime hours worked unless otherwise stated in the wage determination.



Check the appropriate box on the compliance statement form (WH348) or the compliance statement on the reverse side of the certified payroll (WH347). If fringe benefits are paid to approved plans, funds or programs, box (a) must be checked. If fringe benefits are paid in cash, box (b) must be checked. (Note: When fringes are paid in cash, they must be included in the gross amount earned upon which allowable deductions are made.) If there is a combination of fringe benefit payment, i.e., some to a plan and some in cash, both box (a) and box (b) must be checked with exceptions explained under (c).

The MDT Civil Rights Bureau (CRB) will periodically require contractors, both prime and subcontractors, to provide evidence that fringe benefits have been paid. Evidence shall consist of copies of canceled checks and/or trust fund reports. The objective of the evidence request is not to penalize contractors with sanctions when violations occur. During the course of the project, it will be to the contractor's benefit to promptly resolve questions concerning labor compliance

h. Shifting

When a portion of wages are deducted from an employee's pay and added to the fringe benefit rate, this process is known as "shifting." Under the provisions of § 5.31, 29 CFR any amount of money may be shifted from wages to fringes. Normally, additional money is shifted into fringe benefits to defray increased costs of health insurance.

The amount of money paid to wages and fringes is called the wage/fringe package. Regardless of the amount of money shifted from wages to fringes or vice versa, the wage/fringe package can be no less than the total which is published in the contract. This procedure is permitted by USDOL regulation up to 40 hours in the work week. Overtime must be paid on the published wage, which includes the appropriate zone pay, as listed in the contract, not on the wage after shifting.

When a contractor utilizes the shifting process, a letter of explanation must be provided with the first payroll that the shifting occurs on. Attached to the letter of explanation must be a copy of the collective bargaining agreement which outlines the requirement for the shifting.

i. Records Availability

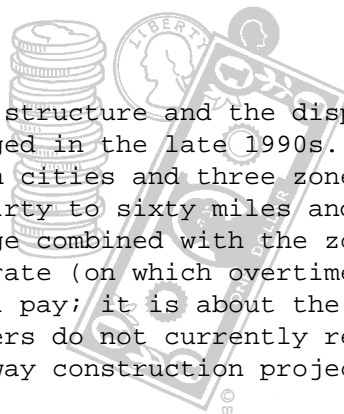
The contractor shall make their payroll records available for inspection by authorized representatives of the contracting agency and/or the U.S. Department of Labor when requested to do so.

j. Vacation Pay

When a contractor is signatory to a Collective Bargaining Agreement (CBA) which requires vacation pay and the vacation pay is included in the basic wage, the vacation pay amount MUST BE LISTED SEPARATELY on the certified payroll. IF THE VACATION PAY IS LISTED SEPARATELY AND THE DEDUCTION TO THE TRUST FUND IS SHOWN ON THE PAYROLL, THE CONTRACTOR MAY PAY OVERTIME ON THE BASE RATE MINUS THE VACATION PAY.

k. Zone Pay

Montana zone pay structure and the dispatch cities which affect them changed in the late 1990s. There are currently only ten dispatch cities and three zone rates (zero to thirty miles, thirty to sixty miles and over sixty miles). The published wage combined with the zone pay become an employee's base rate (on which overtime is based). Zone pay is not travel pay; it is about the proximity to services. Painters do not currently receive zone pay on federal-aid highway construction projects.



U. S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC
CONTRACTS DIVISION

PAYROLL

Form Approved,
Budget Bureau No. 44-R1093

(For Contractor's Optional Use; See Instruction, Form WH - 347 Inst.)

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>										ADDRESS																													
PAYROLL NO.										FOR WEEK ENDING										PROJECT AND LOCATION										PROJECT OR CONTRACT NO.									
111 NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	121 NO. OF WITHHOLDING EXEMPTIONS	131 WORK CLASSIFICATION	141 OT OR SL	141 DAY AND DATE							151 TOTAL HOURS	161 RATE OF PAY	171 GROSS AMOUNT EARNED	181 DEDUCTIONS						191 NET WAGES PAID FOR WEEK																			
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS																						
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5. FREQUENT LABOR VIOLATIONS

a. Subcontractor

The prime contractor is responsible for the subcontractor's adherence to labor compliance regulations. *MDT has no contract with the subcontractors and will resolve all labor compliance matters with the prime contractor.* This can result in the prime contractor being responsible for restitution of wages due for the violation of one of the subcontractors. Required labor provisions (Form FHWA 1273) as well as wage rates must be physically attached to each subcontract.

b. Employees Working in More Than One Classification

When an employee works in excess of 20% of the time in more than one work classification, they must be paid separate wage rates. However, the contractor may pay the higher of the two rates if desired.

c. Crusher Site/Material Suppliers (CFR 29 Pt. 5 Subpt. A 5.2L(1))

- (1) The "SITE OF THE WORK" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (1)(2) of this section, other adjacent or virtually adjacent nearby property dedicated to and used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site."
- (2) Except as provided in paragraph (1)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, crane set-ups, etc., are part of the "SITE OF THE WORK" only where they are dedicated to the covered construction project, AND are adjacent or virtually adjacent to the actual construction location that it would be reasonable to include them.
- (3) Not included in the "SITE OF THE WORK" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which crane set-ups are established by a supplier of materials for the project before opening of bids and are not on the project site, are not included in the

"SITE OF THE WORK."

Such permanent, previously established facilities are not a part of the "SITE OF THE WORK," even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract. CFR 29, Section 5.2, L (1), (2), & (3)

- (4) Employees of material suppliers who also sell to the public are covered by the labor provisions if they are performing work on the project site.
- (4) Determination of "covered or not covered" under the Davis-Bacon related acts will be made given the following procedure.
 - (a) Identify your pit and/or plant location as early as possible. Delaying a request until just before bid opening will probably result in a no determination in time for the bid opening.
 - (b) Plot the pit and/or plant locations clearly on maps of such scale that the sites can be easily discerned.
 - (c) Include and denote relevant distances, perspectives, boundaries, legal descriptions and notes to help in the determination process.
 - (d) Submit a letter or request, the "Site Map(s)" and corroborating documentation to the MDT District Construction Supervisor.

d. Owner/Operators

This exemption only applies to hauling trucks (includes water trucks and distributor trucks). It does not apply to other rented equipment such as dozers, backhoes, motor graders, etc. If the truck operator is the registered owner, the payroll entry will only show the individual's name, address, SS number, and the designation "owner-operator." If anyone other than the registered owner is operating the truck, that person must be paid the appropriate wage rate designated in the contract. Sponsors, relatives and children of registered owners must be paid at the proper Davis-Bacon wage rate.



e. Pilot Cars

Pilot car operators must be paid at the rate of pay specified in the truck drivers portion of the contract wage rates. The owner/operator rule does not apply to pilot car operators.

f. Fringe Benefits

In addition to the basic wage rate, fringe benefits must be paid:



- (1) to a "bona fide" trust fund, or,
- (2) to the employee, or,
- (3) to a combination of 1 & 2 above.

If fringe benefits are paid to a bona fide fund, the employee must be able to have access to that fund. It is the contractor's responsibility to provide information to the employee on how to access the fund. It is also the contractors responsibility to provide CRB with proof the fund is bona fide.

If fringe benefits are paid directly to the employee, the payroll must easily reflect the payment.

g. Guards and Watchmen

Guards and watchmen who serve in no other capacity are not covered under the Davis-Bacon Act; however, they are covered by the Contract Work Hours Standards Act. Therefore, they must receive time and a half for work over 40 hours a week. The straight-time hourly rate must equal the current minimum wage rate under the Fair Labor Standards Act.

h. Flaggers

Flaggers must be paid the prevailing rate established by the contract. In the near future, all federal-aid highway construction contracts will require certified flaggers in Montana.



i. On-site Equipment Repair

The U.S. Department of Labor has ruled that employees of outside firms who repair tires or equipment at the site of the project are covered by the contract labor provisions if they perform a substantial amount of work at the contract site. Generally, work which exceeds 20 percent of the employee's time is considered substantial.

j. Working Foreman

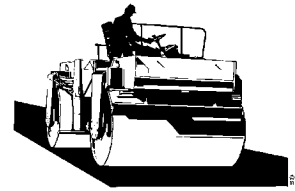
If a supervisor performs laborer or mechanic work on a regular or substantial portion of the time, the supervisor is subject to the labor provisions. A substantial period is over 20 percent.

The supervisor's name must appear on the payroll just as any on-site personnel appear on the payroll even if just

supervising. Hours spent supervising and salary need not be displayed on the certified payroll.

k. Apprentices

- (1) Apprentices can be employed only under a registered program.
- (2) Contractors or subcontractors must submit written evidence of registration to the Engineering Project Manager (apprenticeship agreement or statement of registration). Apprentices will be paid the rate established by the apprenticeship program.
- (3) Employees classified as apprentices who are not registered must be paid the prevailing wage rates published on the basis of the classification of work they actually performed.
- (4) A copy of the apprentice papers will be attached to the first payroll on which the name of the apprentice appears.



l. On-the-Job Trainees

- (1) Must be designated on projects in which a federal-aid trainee is required.
- (2) Can be paid less than journey worker scale provided they have been identified in writing prior to the commencement of training. The contract Supplemental Training Specifications define exactly the pay rates which are to be paid to trainees.
- (3) Trainees who are enrolled in an official training program on a federal-aid project may be paid the following percentages of the appropriate minimum journey worker's rate as specified in the contract wage rates:

60 percent for the first half of the training period, 75 percent for the third quarter of the training period and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on the project.

In that case, the appropriate rates approved by the Department of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by the Training Special Provisions.

Contractors who are signatory to union bargaining agreements may wish to review those agreements prior to determining the rate of pay to be established for the specific trainee if the rate contained in the bargaining agreement is equal to or more than that contained in the MDT Training Special Provisions.

- (4) Trainees must be properly classified on each payroll and shown at the proper classification, i.e., "group 1 operator trainee" on each payroll.

m. Weigh/Dump Persons

Weigh persons and dump persons are not presently covered under Davis-Bacon if the only duties performed are the weighing and recording of weights by the weigh person and the collection and recording of weighed materials by the dump person at the delivery point. Like all on-site personnel, they must be shown on either the prime or the subcontractor's payroll.

n. Gravel Testers

Gravel testers performing work on or adjacent to the project site are exempt from Davis-Bacon wages. They must be shown on either the prime or the subcontractor's payroll like all other on-site personnel.

o. Surveyors

Blue top surveyors and bridge control surveyors are exempt from Davis-Bacon wage rates. Submission of payrolls for surveyors is not required.

6. NEW CLASSIFICATIONS

From time to time a new category arises that substantially differs from existing wage rate classifications. Such an example is the new operator classification, **group 1 farm tractor operator**. The naming of this classification with its accompanying wage rates occurred based on the following criteria:

- the work to be performed by the classification is not performed within an existing classification.
- the classification is utilized in the area by the construction industry.
- the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the determination in other categories.

When a contractor believes a new classification is necessary, the contractor must complete a GSA Standard Form SF1444 and submit it to the

MDT Civil Rights Bureau. The CRB will forward the request to the U.S. Department of Labor for approval.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX
☐ SERVICE CONTRACT
☐ CONSTRUCTION CONTRACT

NOTE: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16 AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER

1. TO: ADMINISTRATOR, Employment Standards Administration
 WAGE AND HOUR DIVISION
 U.S. DEPARTMENT OF LABOR
 WASHINGTON, D.C. 20210

2. FROM: (REPORTING OFFICE)

3. CONTRACTOR

4. DATE OF REQUEST

5. CONTRACT NUMBER

6. DATE BID OPENED (SEALED BIDDING)

7. DATE OF AWARD

8. DATE CONTRACT WORK STARTED

9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)

10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____

DATED: _____

a. LIST IN ORDER, PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) (Use reverse or attach additional sheets, if necessary)	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)

15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE

TITLE

CHECK APPROPRIATE BOX—REFERENCING BLOCK 13

☐ AGREE☐ DISAGREE

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE—SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA)

☐ THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

☐ THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
 (Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE

TITLE AND COMMERCIAL TELEPHONE NO.

DATE SUBMITTED

7. LABOR COMPLAINTS

Complaints may be filed with the MDT Civil Rights Bureau (CRB) whenever a contractor's employee believes the proper wages or fringe benefits have not been paid. Complaint inquiries arise whenever there is reason to believe that violations exist. Sources of complaint inquiries or complaints may be employees, their representatives, competing employers or other interested parties. Complaints are treated with confidentiality. Complaints must be submitted in writing by use of MDT Form LC-2.



Investigations will refute the allegations made or produce evidence upon which corrective action must be taken. Attention is paid to detail. Evidence to substantiate the findings must be provided. A case file containing correspondence, evidence and all other pertinent material is maintained. At the conclusion of the investigation, if the allegations have been substantiated, a demand is made for resolution and compensation. If the complaint is disproved, it is dismissed.

The CRB's investigative procedures will include, but are not limited to, the following:

- review of the data submitted by or requested from the contractor;
- personal interviews with all parties to the complaint;
- personal interview with knowledgeable parties, i.e., MDT Engineering Project Managers contractor payroll personnel;
- analyze and evaluate information, make determinations and recommendations to resolve the issue; and
- provide a report of investigation to Federal Highway Administration.

8. ENGINEERING PROJECT MANAGER LABOR COMPLIANCE RESPONSIBILITY

The MDT Engineering Project Manager (EPM) will ensure that contract required labor provisions have been met in the same manner as any other contractually required item. Final determination of labor compliance rests with the Civil Rights Bureau (CRB). For that reason, EPM is requested to inform the CRB of specific problems they may observe and are unable to correct on the field level.

a. Engineering Project Manager Files

The EPM's project file must include the following information:

- (1) Copies of prime and each subcontractor's discrimination complaint procedures along with claim form



MONTANA DEPARTMENT OF TRANSPORTATION
Civil Rights Bureau
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

LABOR COMPLIANCE COMPLAINT

1. Name: _____ 2. Social Security #: _____
Mailing Address.: _____
3. Home Phone: () _____ Work Phone: () _____
4. Identification of Federal-aid Highway Project on which this complaint is filed:

(project number, if known) (location of project)
5. Nature of complaint (check applicable statements):
a. underpayment of wages for work performed _____
b. underpayment of overtime for work performed _____
c. unauthorized payroll deductions _____
d. non-payment of fringe benefits _____
e. other (explain) _____
6. Name of contractor you were employed by: _____
7. Name of immediate supervisor: _____
8. Dates during which your complaint occurred:
From _____ To _____
9. Type of work you performed (check applicable crafts):
Laborer _____ Operator _____ Truck Driver _____ Cement Mason _____
Ironworker _____ Other (specify) _____
10. Have you explained your complaint to your employer?
Yes ____ No ____
If so, who did you talk to? _____
11. Describe your complaint in detail. BE SPECIFIC IN IDENTIFYING SIZES AND TYPES OF EQUIPMENT USED. (Use back of this form, if necessary.) Attach a copy of any time records you may have kept.

(Signature)

(Date)

Project # _____

Designation _____

I hereby authorize the Montana Department of Transportation to release
my name to _____
during their investigation of my labor complaint on the above project.
I understand that I am not required to sign this form in order for the
Montana Department of Transportation to investigate my complaint.

(Name)

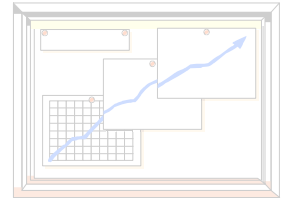
(Date)

Notarized by:

- (2) If applicable, copy of approved training programs.
- (3) If applicable, copy of 7a monthly training reports, along with copies of time cards and appropriate diary entries.
- (4) Copies of spot check interviews.
- (5) Diary notes reflecting dates each bulletin board was inspected.
- (6) Copies of prime and subcontractor payrolls.

b. Bulletin Boards

The EPM must inspect each prime and each subcontractor's bulletin board at least once a month. The EPM's diary should indicate the dates the bulletin boards were checked and include notations on any problems. If information is missing from the bulletin board, the Project Superintendent must be notified and requested to take appropriate action. Appropriate documentation in the diary is required.



Bulletin boards or stationary three ring binders must be located in an area accessible to all employees. They may not be located inside tool vans.

Three ring notebooks located in supervisors vehicles can be used for bulletin board materials if the contractor is extremely mobile on the project site. For example: 1) paint stripers, 2) guardrail installers, and 3) fencers, etc.

The bulletin board must contain the following documents:

- (1) EEO is the Law Poster.
- (2) Company Discrimination Complaint Procedures (must be on company letterhead, signed by a management level official, and currently dated).
- (3) Discrimination Complaint Form.
- (4) Company Policy Statement (signed by management level and currently dated).
- (5) Company EEO Officer appointment letter (signed by management and currently dated).
- (6) Dual Employment Poster.*

- (7) Form FHWA 1273 (formerly known as pink sheets).
- (8) Current Wage Rates.
- (9) Wage Rate Information Poster.
- (10) Notice Poster.*
- (11) DBE Hotline Poster

*These notices have been combined on one 8 1/2 X 11 poster.

c. Preconstruction Conferences

When it is not possible for the CRB staff to attend a pre-construction conference, it is the EPM's responsibility to assure Labor Compliance contract provisions are presented.

d. Spot Check Interviews

Spot Check Interviews are conducted by the EPM or appropriate designee once during the first month the prime contractor or subcontractor is on the project site and once a month thereafter. A form LC-1 must be completed.

Example of LC-1 on following page

LABOR COMPLIANCE SPOT CHECK

PROJECT NO. _____ DISTRICT _____

DESIGNATION _____ DATE _____

CONTRACTOR _____ INTERVIEWER _____

PRIME _____ SUBCONTRACTOR _____

LC-1 MUST BE ATTACHED TO CORRESPONDING PAYROLL
INTERVIEWS ARE TO BE CONDUCTED MONTHLY
RETAIN ONE COPY FOR YOUR FILES.
REFER TO CRB MANUAL, LABOR COMPLIANCE SECTION.

EMPLOYEE NAME	CLASSIFI- CATION	RATE OF PAY	WORK PERFORMED	1. ATTEND EEO MTGS? 2. EEO OFFICER? 3. COMPLAINT FILING? 4. BULLETIN BOARD? 5. BENEFIT PROGRAM? (CIRCLE IF KNOWN)					Are you employed by another contractor on this project? (If yes, write in name of contractor.)
		OT?*		1	2	3	4	5	
1.				1	2	3	4	5	
2.				1	2	3	4	5	
3.				1	2	3	4	5	
4.				1	2	3	4	5	
5.				1	2	3	4	5	
6.				1	2	3	4	5	
7.				1	2	3	4	5	
8.				1	2	3	4	5	
9.				1	2	3	4	5	
10.				1	2	3	4	5	
11.				1	2	3	4	5	
12.				1	2	3	4	5	
13.				1	2	3	4	5	
14.				1	2	3	4	5	
15.				1	2	3	4	5	
16.				1	2	3	4	5	
17.				1	2	3	4	5	

* Are you receiving time and a half wages for all work over 40 hours in a workweek?

The EPM must select a random number of contractor employees who are representative of each craft on the project site to interview. When the second spot check interview is conducted, a different group of contractor employees should be selected. A good rule of thumb to follow is to interview at least a third of the contractor's personnel during each spot check interview.

If the contractor's work force is comprised of four persons or less, the initial spot check interview should be comprised of all employees. If no turnover in contractor personnel occurs, follow-up spot check interviews are not necessary unless the composition of the work force changes or if you suspect problems.

When each spot check interview has been accomplished, the LC-1 must be compared to the payroll with the same week ending date. All persons interviewed should be on that payroll and should have been paid for the work they were performing while being interviewed. If the employees on the LC-1 are not on the payroll for the corresponding week, the contractor must be notified and a supplemental payroll requested. The LC-1 must be attached to the payroll and forwarded to the Civil Rights Bureau.

e. Payrolls

- (1) Payrolls are due to the EPM seven (7) calendar days following the end of the payroll period.
- (2) The payroll must be checked by the EPM or appropriate designee. The Engineer's Payroll Check Sheet (LC-3) must be completed, attached to each weekly payroll, and forwarded to the Civil Rights Bureau. Payrolls should not be held and two or more sent together, each payroll should be sent to the CRB as soon as received and checked.

f. Payroll checking shall consist of:

- (1) The employee's full name must be shown on each weekly payroll submitted. The employee's address and social security number must also be shown on the payroll covering the first week in which the employee worked on the project. (General Delivery is not an acceptable address.) The employee's address need not be included on subsequent payrolls unless the address changes.
- (2) The employee's work classification must be complete and in accordance with the wage determination contained in the contract.
- (3) The employee's hourly wage rate and, when applicable, the overtime hourly wage rate.

- (4) The employee's daily and weekly hours worked in each classification including actual overtime hours worked.
- (5) Deductions - The only authorized payroll deductions are State and Federal withholding tax and FICA (Medicare & Social Security Tax). Deductions for any other purpose (union dues, cash advance, tool purchase, United Way contribution, etc.) are not legal unless the employee provides a written authorization. This signed authorization must accompany the first payroll on which the deduction occurs.
- (6) The net wages paid must be shown.
- (7) Overtime - All hours worked in excess of 40 hours a week must be at one and a half times the basic wage rate. The term "basic wage rate" means the straight time hourly rate actually being paid, and shall not be confined to the contract minimum rate in computing the overtime rate. The basic wage rate for computing the overtime does not include fringe benefit payments unless they are not listed separately on the certified payroll.
- (8) Supplemental Payrolls - If there is an underpayment of wages, a supplemental certified payroll must be furnished as proof that restitution has been made. A supplemental payroll should indicate only the amount paid to the employee as restitution of wages due, not the entire amount paid to the employee for the week in which the underpayment occurred. Photo copies of both sides of the adjustment check or a signed receipt from the employee may be requested as additional proof of payment.

Supplemental certified payrolls may also be requested when such problems as lack of classification, improper identification (no social security number or address), or omitted employees occur.
- (9) Spot Check Interview - In addition to monitoring for the above information, the EPM conducts spot check interviews on-site and makes a comparison with certified payrolls for that time period. Spot check interviews are to be conducted the first month the contractor is on the project and monthly thereafter. The workers on the spot check must appear on the certified payroll.
- (10) The EPM has the responsibility to compare his/her observations and field notes with appropriate activities as reported in the payrolls. For example, is an operator being paid in the proper classification?

ENGINEER'S PAYROLL CHECK SHEET

TO: **Civil Rights Bureau**
Montana Dept. of Transportation
2701 Prospect Ave.
Helena, MT 59620

PROJECT NUM: _____

DESIGNATION: _____

CONTRACTOR: _____

EPM: _____

PAYROLL #: _____

PAYROLL PERIOD: FROM _____ **TO** _____ **ZONE** _____

- A. CHECK BULLETIN BOARD EACH MONTH.
- B. NOTIFY PRIME CONTRACTOR OF SUBCONTRACTOR PAYROLL PROBLEMS.
- C. SPOT CHECK (LC-1) INTERVIEWS WILL BE CONDUCTED MONTHLY. ATTACH TO CORRESPONDING PAYROLL AND SUBMIT TO CIVIL RIGHTS BUREAU.

	<u>YES</u>	<u>NO</u>
1. Does payroll indicate project number and payroll period covered?	_____	_____
2. Are full names, social security numbers, and home addresses shown (first payroll entry)?	_____	_____
3. Are workers properly classified and codes indicated that correspond to the contract?	_____	_____
4. Has the contractor submitted conversion codes with first payroll, if needed?	_____	_____
5. Is overtime paid at the correct rate?	_____	_____
6. Are the deductions shown allowable and/or authorized?	_____	_____
7. Have apprenticeship papers been provided, if needed?	_____	_____
8. Is Statement of Compliance attached to payroll?	_____	_____
9. Are benefits certified as "bona fide" and plan listed under remarks?	_____	_____
10. Has supplemental payroll been requested for this payroll?	_____	_____

UNDER NO CIRCUMSTANCES SHOULD ANY PAYROLL BE RETURNED TO A CONTRACTOR FOR CORRECTION!

Any correction necessary must be on a supplemental payroll. This check sheet should be filled out and attached to the FRONT of the payroll being submitted to the Civil Rights Bureau, with one LC-3 per payroll.

ADDITIONAL COMMENTS:

- (11) The EPM will keep one copy of the certified payroll and submit one copy of the certified payroll accompanied by the Engineer's payroll check sheet to the Civil Rights Bureau.

The check sheet will have appropriate blanks filled in and contain any pertinent comments which the EPM believes would be necessary to properly evaluate the payroll.

When payroll errors occur, the EPM can:

- (a) have the correction made in the field as long as that correction does not alter an individual's earnings. For example, an incomplete classification can be corrected at the field office. These types of corrections must be initialed by the contractor's superintendent and the EPM. The payroll cannot be returned to the Company's home office for correction

OR

- (b) request supplemental payrolls from the contractor's headquarter office. ERRORS WHICH AFFECT A CHANGE IN AN INDIVIDUAL'S EARNING REQUIRE A SUPPLEMENTAL PAYROLL. A payroll cannot be returned to the contractor for correction. Both the original and the supplemental payrolls must be submitted to the CRB.

9. CONTRACTOR'S LABOR COMPLIANCE RESPONSIBILITY

a. Payrolls

It is the prime contractor's responsibility to assure that persons employed on a federal-aid highway project are paid in accordance with the wage rates established in the contract. Wage rates may vary from contract to contract, it is each contractor's responsibility to assure that the rates contained in each specific contract are being paid to the employees on the corresponding project site.

The \$2,000 threshold of Davis-Bacon coverage pertains to the amount of the prime contract, not the amount of the individual subcontracts. If the prime contract exceeds \$2,000, all work on the project is covered. If the subcontractor fails to pay the prevailing rate or fringe benefits, the prime contractor will be held accountable. If necessary, all progress payments and/or final payments will be withheld from the prime contractor until such time

as labor violations have been corrected.

Payrolls must be submitted within seven (7) days following the end of each pay period.

It is the contractor's responsibility to become familiar with all payroll requirements. See the "Payroll Requirements" portion of this manual.

If it is determined that payrolls and/or other supporting documents have been falsified, the contractor may be subject to the following actions:

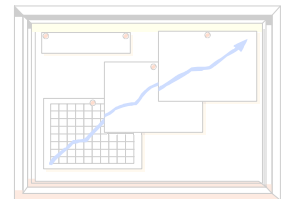
- \$10,000 penalty.
- debarment from bidding all federal or federal-aid projects, including highways, on a nationwide basis.

Some examples of falsified records include the following:

- indicating on the Statement of Compliance that fringe benefits have been paid to a trust fund when they have not.
- when the payroll indicates the net amount paid and the employee's pay check is made out for a lesser amount.
- showing overtime payments on the payroll which have not been included in the employee's pay check.
- reducing the number of hours that are on the time card or that were actually worked, to avoid paying at the overtime rate.

b. Bulletin Boards

Bulletin boards must be located on the project site in an area accessible to all employees. They cannot be located inside of tool vans. Bulletin boards or stationary three ring binders must be placed on a on a semi-permanent structure in a manner enabling employees to have access to each posting.



Three ring notebooks located in supervisors vehicles can be used for bulletin board materials if the contractor is extremely mobile such as guardrail installers, paint stripers or traffic controllers.

Contents of the bulletin board must include but not be limited to:

- (1) EEO is the Law Poster.

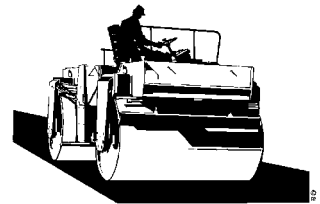
- (2) Company Discrimination Complaint Procedures (must be on company letterhead, signed by a management level official, and currently dated).
- (3) Discrimination Complaint Form.
- (3) Company Policy Statement (signed by management level and currently dated).
- (4) Company EEO Officer appointment letter.
- (5) Dual Employment Poster.*
- (6) Form FHWA 1273 (formerly known as pink sheets).
- (7) Current Wage Rates.
- (8) Wage Rate Information Poster.
- (9) Notice Poster.*

*These notices have been combined on one 8 1/2 X 11 poster.

c. Trainees:

Trainees who are enrolled in an official training program on a federal-aid project may be paid the following percentages of the appropriate minimum journey worker's rate as specified in the contract wage rates:

60 percent for the first half of the training period, 75 percent for the third quarter of the training period and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on the project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by the Training Special Provision.

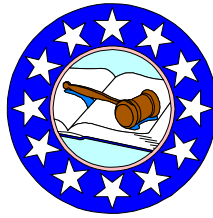


Contractors who are signatory to union bargaining agreements may wish to review those agreements prior to determining the rate of pay to be established for a specific trainee. The rate contained in the bargaining agreement should be equal to or greater than that contained in the MDT Training Special Provisions.



LAWS AND REGULATIONS
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LAWS AND REGULATIONS

EEO

- Federal statutes to the extent they apply to programs receiving federal financial assistance are found in CFR 200
- Other federal statutes with related authority which may apply:
 - Title VII of the 1964 Civil Rights Act as amended
 - The Age Discrimination in Employment Act
 - The Vocational Rehabilitation Act of 1973
 - Executive Order 11246
 - Executive Order 11375
- State non-discrimination statutes
 - Montana Human Rights Act, Title 49, Chapter 2, MCA
 - Governmental Code of Fair Practices, Title 49, Chapter 3, MCA

LABOR

- Federal statutes to the extent they apply to programs receiving federal financial assistance are found in:
 - Contract Work Hours and Safety Standards Act, 29 CFR 3, 5 & 7
 - Copeland "Anti-Kickback" Act, 29 CFR 3 & 5
 - Davis-Bacon Act, 29 CFR 1, 3 5, & 7
 - Fair Labor Standards Act, 29 CFR 778
 - False Claims Act
 - Fraud Provisions
 - Miller Act
 - Privacy Act, 49 CFR 10

DBE PROGRAM

- Section 1003(b) of the Transportation Equity Act of 1998, 49 CFR Pt. 26

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)	
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I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;

Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 USC 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to

assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority

groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the

term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular

weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of

Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved

by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such work week unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing

apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection,

copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and

paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to

his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false

statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

**X. IMPLEMENTATION OF CLEAN AIR ACT AND
FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

**1. Instructions for Certification -
Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective

participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

**Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion-Primary
Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period

preceding this application/ proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

**2. Instructions for Certification - Lower
Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49CFR29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

**Certification Regarding Debarment,
Suspension, Ineligibility and Voluntary
Exclusion-Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

**XII. CERTIFICATION REGARDING USE OF
CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of

the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as onsite work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment

Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

SPECIAL PROVISIONS

**EEO AFFIRMATIVE ACTION REQUIREMENTS ON
 FEDERAL & FEDERAL-AID CONSTRUCTION CONTRACTS**

Effective immediately all bid proposals for Federal-Aid contracts and subcontracts will include the following requirements listed as Appendix A & B. These requirements are applicable only when the contract or subcontract consists of \$10,000 or more.

There will be some duplicate material in the contract as a result of incorporating these new Office of Federal Contract Compliance Programs requirements; however, the Department of Highways cannot discontinue use of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities" (pink sheets found elsewhere in the proposal) as it is regulatory material which requires an amendment by the Secretary of Transportation and publishing in the Federal Register. The provisions for "Specific Equal Employment Opportunity Responsibilities" will be amended in the near future to eliminate any duplication in the contract provisions.

Your attention is directed to paragraph 3 of Appendix A which points out that the Contractor will provide written notification to OFCCP of award of any subcontract in excess of \$10,000. The contractors are advised that their notification will continue, as our regular reporting procedures, by making such notification to the Montana Department of Highways which will then report it to the FHWA, who will in turn report to OFCCP.

APPENDIX A

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the Equal Opportunity Clause and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR FEMALE PARTICIPATION EACH TRADE		6.9%
TIMETABLES		
GOALS FOR MINORITY PARTICIPATION IN EACH TRADE		
153 Great Falls, MT		
SMSA (Standard Metropolitan Statistical Area) Counties		
3040 Great Falls, MT		3.2%
Cascade County		
Non-SMSA Counties		4.1%
Blaine, Broadwater, Chouteau, Fergus, Glacier, Hill, Jefferson, Judith Basin, Lewis & Clark, Liberty, Meagher, Petroleum, Phillips, Pondera, Teton, Toole, Wheatland		
154 Missoula, MT		
Non-SMSA Counties		2.7%
Beaverhead, Deer Lodge, Flathead, Granite, Lincoln, Madison, Mineral, Lake Missoula, Powell, Ravalli, Sanders, Silver Bow		
155 Billings, MT		
SMSA Counties		
0880 Billings, MT		3.3%
Yellowstone County		
Non-SMSA Counties		3.3%
Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Gallatin, Garfield, Golden Valley, McCone, Musselshell, Park, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux, Yellowstone Nat'l Park		
Non-SMSA Counties		
Valley, Daniels, Sheridan, Richland, Roosevelt		4.4%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

APPENDIX B

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

- a. "Covered area" means the State of Montana;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take

good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring all for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific

review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group, has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which established different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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